United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, SECOND SESSION

## SENATE—*Thursday, March 3, 1988*

*(Legislative day of Wednesday, March 2, 1988)*

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

### PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*Blessed be the God, even the Father of our Lord Jesus Christ, the Father of mercies, and the God of all comfort, who comforteth us in all tribulation that we may be able to comfort them which are in trouble, by the comfort wherewith we ourselves are comforted of God.*—2 Corinthians 1:3-4.

Merciful Father, full of compassion, we pray for Your gracious comfort for those among this large Senate family who are hurting.

We are grateful for Senator BIDEN's recovery. May it continue to complete restoration, and may Mrs. Biden, their family and friends, rest in Your grace.

Thank You for Abraham McPhail's successful surgery. May his recovery be rapid and total.

We pray for total health and strength for Bill Eschinger and Sean Hart. We pray for Your presence, blessing, and comfort for Officer Clinton Johnson and Bill Dietrich.

We remember Sheila Burke in the sudden loss of her mother, and ask Your special blessing upon her in her hours of grief. We pray for Doris Underwood in the hospital and pray for her recovery.

And, gentle Lord, there are probably many others of whom we are uninformed. Embrace them in Your loving care and provide in mercy and grace whatever their need.

Thank You, kind Heavenly Father, for Your unceasing care. We pray in His name who is love incarnate. Amen.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, March 3, 1988.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

JOHN C. STENNIS,
*President pro tempore.*

Mr. REID thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

### THE JOURNAL

Mr. BYRD. Mr. President, even though the Senate did not adjourn, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### DEVELOPING THE IMPLEMENTING LEGISLATION FOR THE UNITED STATES-CANADA FREE TRADE AGREEMENT

Mr. BYRD. Mr. President, the Speaker of the House, Mr. WRIGHT and along with the chairman of the Senate Finance Committee, Mr. BENTSEN, and the chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, engaged in an exchange of letters on February 17, 1988, with the administration's principal officials on international trade matters, Secretary of the Treasury James Baker and Trade Representative Clayton Yeutter, concerning the United States-Canada free trade agreement. Legislation must be developed to implement this highly complex agreement, and the exchange of letters was intended to establish some basic ground rules for this process.

Under so-called fast-track procedures of the Trade Act of 1974, the administration may forward legislation to the Congress to implement this agreement, and that legislation must be considered within 60 legislative days of its submission and is not amendable. Traditional practice under the fast-track has been to develop such implementing legislation jointly, in close consultation with the Congress. The administration in its letter has pledged to follow the spirit of this practice, and to work closely with this Congress to develop such legislation. The administration has agreed not to forward the legislation prior to June 1, 1988, unless there is a mutual agreement with the congressional leadership to submit it earlier.

Lastly, the congressional leadership has committed itself to disposing of the legislation before the 100th Congress adjourns sine die.

Mr. President, the preparation of the implementing legislation is going to be a complex and difficult undertaking. Six standing committees have jurisdiction over laws which may have to be amended to implement the agreement. Beyond this, there are a number of questions and uncertainties which have arisen over, first, the implications of the agreement for specific industries and sectors in the U.S. economy; second, over the precedents that are being set in the agreement for future bilateral and multilateral trade agreements; and, third, concerning the ratification and implementing procedures in Canada, particularly as between the Canadian national govern-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

ment and the Canadian provincial governments.

This is a very important agreement, involving America's most important trading partner. Each year the United States and Canada exchange more goods, services, and capital than any two countries in the world. Bilateral trade goods and services exceeded $150 billion in 1986, for instance. There can be no more critical ally for the United States than our northern neighbor. It is going to take very intensive and very responsible action on the part of both the Congress and the administration to make these consultations work successfully. To that end, Mr. President, I have created in the Senate a coordinating body to serve as the focus of our efforts in preparing the implementing legislation, and to work with the administration in this effort. I have asked the chairman of the Senate Finance Committee, Mr. BENTSEN, to serve as the overall Senate coordinator, and the chairmen of the other relevant five committees, including Agriculture, Banking, Energy, Governmental Affairs, and Judiciary, to cooperate closely with Mr. BENTSEN. In addition, I have written Mr. Baker and Mr. Yeutter, informing them of this arrangement, and indicating that I believe the consultative process should begin immediately.

I indicated in my letter of yesterday, Mr. President, that I was concerned with a number of matters related to the Canadian agreement. These concerns are shared by a large number of Senators. I would note that the distinguished Senator from Montana, Mr. BAUCUS, and the distinguished Senator from New Mexico, Mr. DOMENICI, are leading a bipartisan effort to raise their concerns at an early stage in the process, in the hope and expectation that their concerns will be adequately addressed as the consultations with the administration proceed. Roughly a third of the Senate has now signed a letter that they have circulated in this regard.

My own State of West Virginia, for instance, is a major producer of coal and natural gas. There is not yet any certainty about the specific impact of the agreement on the American import of subsidized Canadian electricity and its implications for natural gas and coal production in the United States. The uncertainty is compounded by question marks over the future of Canadian subsidy programs under the agreement and also over the range of independence of action permitted to provincial authorities in the Canadian system.

In addition, this agreement contains a provision for binding arbitration applied to antidumping and countervailing duty cases, the first such mandatory arbitration provision in any United States trade law. It eliminates the power of judicial review of such cases by United States courts and therefore has the obvious effect of reducing United States sovereignty to make and adjudicate final decisions in trade disputes. Since the provision may well be used as a model for use in future multilateral trade negotiations, it will require very close scrutiny by the Senate.

As I wrote Messrs. Baker and Yeutter, I hope that Congress and the administration will be able to work closely together to resolve the questions which are being raised, and to develop the appropriate implementing legislation. The Senate is ready and organized for that challenging task, and I have encouraged them to begin the consultative process immediately.

Mr. President, I ask unanimous consent that the letter by me to Messrs. Baker and Yeutter, their letter to Speaker WRIGHT and Mr. ROSTENKOWSKI, Mr. BENTSEN and me, and my letter to Senator BENTSEN dated March 1, 1988, be included in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
*Washington, DC, March 1, 1988.*

Hon. JAMES A. BAKER,
*Secretary of the Treasury,*
*Washington, DC.*
Hon. CLAYTON YEUTTER,
*U.S. Trade Representative,*
*Washington, DC.*

DEAR MR. SECRETARY AND MR. AMBASSADOR: Thank you for your letter of February 17, 1988, regarding the process by which you intend to approach the crafting of the legislation to implement the U.S.-Canada Free Trade Agreement. I appreciate your statement that you intend for the development of that legislation to be a "cooperative effort between the Administration and the Congress, in keeping with past practice under the fast track", and not to submit such legislation prior to June 1, 1988. We will need all of that time, and perhaps more, for this effort to be successful.

I cannot emphasize too strongly the importance of comprehensive and intensive consultations in the preparation of such legislation, and of beginning this process immediately. To facilitate it, I have today created a Senate coordinating body which will work with the Administration's representatives. I have asked Senator Bentsen, Chairman of the Senate Finance Committee, to act as the overall Senate coordinator, and the chairmen of the Agriculture, Banking, Energy, Governmental Affairs, and Judiciary Committees to work closely with Senator Bentsen in this effort. All six committees have jurisdiction over laws that may need to be amended in order to implement the agreement.

I have not taken a position on the Agreement, because it is as yet unclear to me what the actual benefits and costs will be to the United States and to my own state of West Virginia. There are also a number of unresolved questions as to the precedents that are being set in the Agreement for future trade pacts, both bilateral and multilateral, as well as the method by which Canada will ratify and implement the Agreement. The range of these complex issues is wide, and you should be aware that many Senators are concerned about the disadvantageous effects the Agreement may have on a number of American industries.

West Virginia, for instance, is a major producer of coal and natural gas. There is not yet any certainty about the specific impact of the Agreement on the American import of subsidized Canadian electricity and its implications for natural gas and coal production in the United States. This highlights a general uncertainty in the Senate over the future of Canadian subsidy programs under the Agreement. A number of my colleagues are concerned that the negotiators failed to eliminate certain trade barriers, such as subsidies, the effect of which will be to institutionalize them, and at the same time have made it more difficult for the United States to construct remedies for them.

Although it appears from a reading of the Agreement that progress was made in opening markets in some sectors, I would also point out that new energy investments on lands owned by the national Canadian government must still have majority Canadian participation. This has raised questions about the range of opportunity which will exist for Americans to make new investments in Canadian energy resources.

I am also concerned about certain basic institutional questions raised by the creation in the Agreement of a bi-national dispute settlement mechanism regarding anti-dumping and countervailing duty cases, and which eliminates the power of judicial review by United States courts. This is the first instance of binding arbitration applied to a United States international trade agreement, and, I understand, was agreed to after strenuous Canadian insistence. This has the obvious effect of reducing United States sovereignty to make and adjudicate final decisions in trade disputes, and may well be used as a model for use in future multilateral trade negotiations. The implications of this appear to be far reaching, and demand very close scrutiny.

Lastly, there seem to be serious questions regarding the procedure for Canadian ratification and implementation of the Agreement. Although the Canadian national government asserts that ratification is its exclusive prerogative, I understand that some Canadian provincial authorities disagree with that assessment.

The situation is even more complex regarding the implementing legislation. For instance, in return for a further opening of the United States market for energy imports, the Agreement would give the United States more assured access to Canadian energy resources. Such access is important for New England and in order to reduce our national dependency on insecure supplies from Middle Eastern countries. Under the agreement Canada will remove some of its current barriers to energy exports. If Canada imposes national security or short supply controls on energy exports, Canadian and American producers are to share equally in any cutback. However, many of these resources are owned or controlled by the Provincial governments. It is unclear whether the Provinces will be bound by the terms and conditions of the Agreement and its implementing legislation.

I recognize the importance of this trade agreement, and the need to develop the best possible relationship with Canada. It is my hope that Congress and the Administration will be able to work closely together to

settle the unresolved questions and uncertainties which are being raised, and to develop the appropriate implementing legislation. The Senate is ready and organized for that challenging task, and I encourage you to begin the consultative process immediately.

Sincerely,

ROBERT C. BYRD.

---

U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
*Washington, DC, February 17, 1988.*

Hon. JIM WRIGHT,
*Speaker, House of Representatives, Washington, DC.*
Hon. ROBERT BYRD,
*Majority Leader, U.S. Senate, Washington, DC.*
Hon. DAN ROSTENKOWSKI,
*Chairman, Committee on Ways and Means, House of Representatives, Washington, DC.*
Hon. LLOYD BENTSEN,
*Chairman, Committee on Finance, U.S. Senate, Washington, DC.*

GENTLEMEN: We are writing to confirm our earlier conversations regarding Congressional consideration of the U.S.-Canada Free Trade Agreement implementing legislation.

Based on our conversations and understandings, the President will not forward implementing legislation to the Congress prior to June 1, 1988, unless we mutually agree to an earlier submission date. We welcome your agreement to have a vote in both Houses under the fast track no later than the end of this session and, we hope, before the August recess.

We understand fully the preparatory work necessary to make the fast track work successfully. We want and intend to live up to the spirit as well as the letter of the fast track.

Obviously, the President cannot make an absolute guarantee that he will be bound to legislation that has not yet been drafted, just as you cannot guarantee Congressional approval of such legislation. The Administration intends, however, for the drafting of the implementing legislation to be a cooperative effort between the Administration and the Congress, in keeping with past practice under the fast track.

Therefore, the Administration is committed to a process which would enable the President to submit to the Congress for approval the product of this joint effort. The Administration will accept the provisions worked out in the consultative process, provided they are consistent with the Agreement and its implementation and are appropriate to carrying out its fundamental purposes.

We greatly appreciate your efforts to enable this historic agreement to be enacted into law.

Sincerely,

JAMES A. BAKER, III,
*Secretary of the Treasury.*
CLAYTON YEUTTER,
*U.S. Trade Representative.*

---

THE SPEAKER'S ROOMS,
HOUSE OF REPRESENATIVES,
*Washington, DC, February 17, 1988.*

Hon. JAMES A. BAKER, III,
*Secretary of the Treasury, Washington, DC.*
Hon. CLAYTON YEUTTER,
*U.S. Trade Representative, Washington, DC.*

DEAR MR. SECRETARY AND MR. AMBASSADOR: Thank you for your letter of February 17 regarding Congressional consideration of the U.S.-Canada Free Trade Agreement.

Based on the understandings contained in your letter, we commit that each House of the Congress will vote on the legislation submittted by the President to implement the Agreement, without amendment, no later than the end of this session. Moreover, we will use best efforts to expedite this process and vote in each House before the August recess, if at all possible.

Sincerely,

JIM WRIGHT,
*The Speaker.*
ROBERT C. BYRD,
*Majority Leader.*
DAN ROSTENKOWSKI,
*Chairman Committee on Ways and Means.*
LLOYD BENTSEN,
*Chairman, Committee on Finance.*

---

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
*Washington, DC, March 1, 1988.*

Hon. LLOYD BENTSEN,
*Chairman, Committee on Finance, U.S. Senate, Washington, DC.*

DEAR LLOYD: Secretary James Baker and Trade Representative Clayton Yeutter, as you know, wrote us on February 17, 1988, indicating an intention to work in "a cooperative effort" to develop the legislation necessary to implement the U.S.-Canada Free Trade Agreement. They have also indicated that they would not forward such legislation under fast track procedures prior to June 1, 1988.

A preliminary evaluation of the Agreement indicates that there are a range of complex and uncertain issues which must be settled before Senators can make an informed judgment regarding the advantages and disadvantages of the Agreement. Furthermore, in addition to the Finance Committee, five other Senate standing committees have jurisdiction over laws that may need to be amended in order to implement the Agreement.

It is important that the Senate be well-organized to work closely with the Administration in this process, and I am appointing you to act as overall Senate coordinator of this effort. I have written today to the Chairman of the Senate Committees on Agriculture, Banking, Energy, Governmental Affairs and Judiciary, indicating that you will act in this capacity and soliciting their cooperation. Also, I have written to the Secretary James Baker and U.S. Trade Representative Clayton Yeutter outlining a number of my concerns over the Agreement and identifying you as the coordinator of the Senate effort. I have encouraged them to begin the consultative process immediately.

This is another major challenge for you, Lloyd, and I have complete confidence that you will, as always, rise to meet it.

Sincerely,

ROBERT C. BYRD.

## RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the Republican leader is now recognized.

Mr. SIMPSON. Mr. President, I thank the Chair.

## SENATE RULES DISCUSSION

Mr. SIMPSON. Today, we will go forward with our work to conclude the polygraph legislation, to begin and perhaps conclude the intelligence oversight legislation, and tomorrow go on to the Price-Anderson legislation. So rather than take my ordinarily allotted 10 minutes with regard to something extraneous, let me just preface what will take place later in the day with regard to the unanimous-consent agreement, an allocation of 4 hours toward this side of the aisle, 1 hour toward the other side of the aisle to discuss what has been described as sensitive, extraneous matter, and that is a good title for it. That is the majority leader's definition of it.

It is an issue which has to do with the use of the rules in an appropriate way, the other evening with regard to the compelling of the attendance of absent Senators, and then the use of warrants executed by the occupant of the chair or the Presiding Officer. And there is a difference in definition that should be discussed and will be.

It is an issue which has generated some very strong feelings among many, and all of those who have expressed those feelings will be speaking on the issue today. It has created, as I say, strong feelings and a sense of some confusion and conflict. So it is an issue which we will be discussing later today because it has come to our attention that several on our side feel it needs to be addressed and not wait until our return after the 1 week recess after we have had a very productive 3 weeks of activity. It is typical of the generosity and acuity of the majority leader when I express to him this burgeoning need of some on our side to unburden their very strong feelings about it. I do not say this lightly. He fully realizes that there will be some rather intense discussion, and he is fully prepared for that and will have his opportunity to share with us further at the conclusion of the time ordered.

Whatever opinion one might have regarding the events of last Tuesday night and the issuance of warrants and the arrest of Senators and the way in which it was performed—and it was done in good humor in the sense of Senator PACKWOOD. The minute he arrived at the Chamber in his condition of apprehension, we immediately said the quorum is present and there was not a sense of outrage at that time—but we must deal with the questions that have been raised. Some of those questions have to do with procedure, and future activity. If the event were to occur again, could we clarify that? Can we define it better? It is an issue that will not go away. Some of the troubling questions will not go away. In order that we not face this same situation in the future, we

should clarify our existing rules and procedures.

That is the intent of what will be in the form of a sense-of-the-Senate resolution which will be referred to this Rules Committee and, just as importantly, referred to the ad hoc committee which is informally chaired by Senators PRYOR and DANFORTH as to quality of life and the possibility of rules changes, whether it is filibustering a motion to proceed or whatever it may be. That committee will have the referral of this in an informal way.

Certainly there should be no inference that any of this is personal or vindictive. The leader used the rules in compelling the Members. The minority used the rules in not making a quorum. That is an act with regard to the will of the Senate.

So indeed none of that should be directed in a personal way toward the majority leader who acted within the rules as they are currently constituted. It is part of the sense-of-the-Senate resolution that those rules be redefined; nor should any of it be directed to the Sergeant at Arms, Henry Giugni, who carried out instructions of the Senate with extraordinary good grace and good humor in what is best described as a troublesome thing for him.

Indeed as we all know him, he is a gentle man who is also very intense in carrying out his duties as they should be carried out. He is that way. He should be commended for the manner in which he carried out what was surely a very unpleasant task for him, and yet one perfectly required to be done.

So I commend him. I have known him, and I have known his brother even longer. They are both extraordinary law-enforcement personnel. He did a very credible job without delegating that duty which could have given rise to a perhaps more contentious situation, knowing the sensitivity and the necessity to do one's duty rather than delegate.

So we will then go through this procedure. Senator SPECTER will be perhaps the lead element of our group. There are many Senators to speak, and I will share the list with the majority leader. Senator SPECTER with his incisive and sagacious mind will begin the probing of it. As I say, even though the arrest warrants of last week were within the rules as they now exist some feel that the rules and procedures should be looked at very carefully, clarified certainly, and perhaps changed so that we do not disrupt the decorum and efficacy and effectiveness of the Senate.

So that is what some will be discussing today, a proposal in the form of a sense-of-the-Senate resolution for clarification of existing rules regarding arrest warrants for Senators. I hope that will be conducted in a civil way. I am sure it will be intense. Some feel intense. That is the reason we were able to place this arrangement together so that we could avoid the intensity of disruption of Thursday and Friday, and that has been avoided.

I have much appreciation for the majority leader and his willingness to expose himself to the—whatever. And that will be again expressive of his love of the Senate, knowing that the other side needs to vent itself from time to time, and this is one of those occasions.

I thank the Chair.

I reserve the balance of my time, if there is any left.

I thank the Chair.

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished acting Republican leader. I was going to call him the Republican leader. He is here at all times, and he works very closely with this leader and certainly at this particular time he is not only the acting leader, assistant leader, but he is the leader.

Was the order entered that the distinguished acting leader on the other side of the aisle was allotted 4 hours under the control of the acting leader, and 1 hour under our control?

The ACTING PRESIDENT pro tempore. The majority leader is correct.

Mr. BYRD. That has been done. All right. I thank the Chair. I thank the distinguished Senator.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 9:30 a.m., with Senators permitted to speak therein for a period not to exceed 2 minutes.

## INF TREATY WOULD MAKE NATO STRONGER

Mr. PROXMIRE. Mr. President, does the INF Treaty diminish the military security of Western Europe? The answer is a loud and emphatic "No." Quite the contrary, the treaty increases the security of free Europe. After all, what does it do? It eliminates all nuclear missiles on both sides with a range of between 300 miles and 3,000 miles. Which side would destroy the larger number of missiles under the INF agreement? The answer is that the Warsaw Pact and the Russians would destroy about three times as many missiles as the North Atlantic Treaty Organization and the United States. Would any intermediate missiles remain? Yes, indeed. France and the United Kingdom would retain their intermediate missiles under the agreement. By contrast, no member of the Warsaw Pact would retain intermediate nuclear missiles.

But would NATO as an organization have any nuclear response to a Soviet-Warsaw Pact invasion of Western Europe? You betcha. NATO is fully equipped with tactical nuclear weapons. These are nuclear warheads launched less than 300 miles from their target. Such warheads would wreck havoc on any attacking pact force, on its troop concentrations, on its supply depots, its airfields and other military concentrations. It is true that tactical nuclear weapons have never really been tested in actual combat as defensive weapons against a land attack. But the Soviets know that NATO has these weapons in spades. They know these weapons have been deployed by NATO forces. They know the NATO forces have extensively tested and experimented with them. And the Soviets know that this new weapon could utterly devastate their conventional attack.

The Soviets also fully understand that behind the tactical nuclear weapons and backing them up is a second line of NATO defense which will have no counterpart in pact force. This is the intermediate range nuclear weapons that the United Kingdom and France will retain after the U.S.S.R. as well as NATO proper and the United States have destroyed their intermediate nukes. The Soviets must fully understand that with pact forces threatening to overrun France and England, neither the United Kingdom nor France could be counted on to refrain from using their own intermediate nuclear weapons that could take out military forces deep into the Soviet Union itself. And the Soviets also fully understand that any Soviet retaliation with their strategic nuclear arsenal at any point would bring the total holocaust that would leave the civilized world a steaming radioactive and very dead corpse.

So the INF Treaty leaves NATO with as strong—in fact a stronger nuclear defense relative to the Soviets than ever. This is, first, because the Soviets will destroy more intermediate missiles. It is, second, true because only the United Kingdom and France will retain intermediate nuclear missiles. It is true in the third place because the deployment of tactical nuclear warheads by NATO forces enable NATO to make a totally new and devastating defense against any pact aggression.

In addition to all this, the excellent recent analysis of Warsaw Pact and NATO conventional strength by Senator CARL LEVIN should make it very clear to any unbiased observer that the NATO military alliance has to be rated at the very least as a standoff in strictly conventional weapons in comparison the the pact. This analysis

concedes the superior number of tanks, planes, artillery and military personnel in the pact command. Senator LEVIN points out, however, that the NATO forces have a sharp advantage in the quality and modernization of weapons. NATO troops are also better trained. NATO pilots have far more flying time. Its naval personnel has much more time at sea. All NATO forces, including land forces, have been through more maneuvers to test and refine and improve performance. In addition, the NATO countries could be counted on as far more faithful and loyal allies than the sullen and resentful Eastern European Soviet allies. Also, the recent defeat of Soviet forces in Afghanistan by ill-equipped, poorly supplied rebels has exposed the weakness of the Soviet forces operating in a neighboring country and enjoying short supply lines.

In an excellent editorial on February 15, the New York Times makes many of the points in support of the INF Treaty that I have made in this speech. They also make one additional and specially impressive point. They call attention to the virtually unanimous support of the INF Treaty by the European leaders in NATO. Here, Mr. President, are the countries that are literally on the firing line. If the NATO military alliance were weakened and NATO was unable to withstand a pact attack these are the countries that would suffer. Many of their people would lose their lives. All of them would lose their freedom. The leaders of these countries know the INF Treaty makes NATO stronger. This is why, Mr. President, the Senate should promptly ratify it.

Mr. President, I ask unanimous consent that the editorial to which I have just referred be printed in the RECORD.

There being no objection, the editorial ordered to be printed in the RECORD, as follows:

THE TREATY, EUROPEANS AND THE JITTERS

What does Europe think of the treaty to eliminate Euromissiles? The answer, as the Senate weighs ratification, is clear: Virtually all West European leaders support the treaty. Some Americans say that behind the official blessings lie deep divisions and doubts. But they confuse genuine support for this treaty and equally genuine concern about the state of the alliance. Failure to ratify the treaty would only deepen those concerns.

European leaders support the I.N.F. agreement because it would leave NATO stronger, not because somebody's twisting their arms. It would eliminate a class of weapons threatening to Europe in which the Russians hold a clear superority. It is the first arms accord dealing directly with European security. Not least, it holds the door open for further diplomatic opportunities with Mikhail Gorbachev's Soviet Union. That's strongly desired by Europeans from far left to far right.

Still, Americans who insist they know the real European mind ignite charge after charge. They contend that the treaty weakens deterrence. But why? More than 300,000 American troops remain in place. So do 90 percent of U.S. nuclear weapons in Europe—4,000 warheads on various delivery systems, including bombers that can reach Soviet territory.

The critics see it all leading to a denuclearized Europe, leaving Moscow with a threatening superiority in conventional forces. But European leaders are well aware that deterrence still requires nuclear weapons on their territories and they won't be suckered into that game by Moscow. The critics maintain that the treaty will make Europe safe for conventional war. How will eliminating Soviet advantages in missiles with ranges between 300 and 3,000 miles do that? They say it will neutralize Bonn. Did Bonn feel safer when Moscow had the edge in mid-range missiles?

Reagan Administration policies have undermined European confidence in America. In its early years, the Administration unsettled Europe with talk of the possibility of limited nuclear war. Then it undercut the doctrine of nuclear deterrence with talk of rendering nuclear weapons impotent with a space shield over the U.S., not Europe. Then in Reykjavik, President Reagan proposed eliminating all ballistic missiles, having breathed nary a word of that remarkable idea to his allies.

Little wonder that many Europeans worry loudly about American thinking and the balance of strategic and conventional forces. The treaty may give a focus to this fretting. But it did not create the worries nor does it exacerbate the underlying problems. On the contrary, it strengthens the alliance militarily and demonstrates its political strength. In the face of dire Soviet threats, Europeans went ahead with deployment of the U.S. Euromissiles, and through the alliance's steadiness, brought about the agreement to destroy all such missiles.

The Senate will serve both the alliance and the ratification process best by doing what the treaty's critics fail to do: take the treaty on its merits—and the Europeans at their word.

## POLYGRAPH PROTECTION ACT

Mr. SPECTER. Mr. President, although I strongly support this bill, I am voting against cloture at this time because I strongly believe such a procedure establishes an attitude of undue rush to judgment by the Senate.

This bill was called for floor action 2 days ago on the afternoon of Tuesday, March 1. The bill was considered by the Senate for only a few hours that afternoon and a cloture motion was filed the same afternoon without any indication of a filibuster or extensive debate.

Extended discussion is unnecessary to emphasize the importance of debate, appropriate consideration and the Senate's deliberative process. That does not occur when a cloture motion is filed virtually contemporaneously with a bill's reaching the Senate floor.

Yesterday, on March 2, amendments were considered with a 10-minute time limitation so that each side had 5 minutes for the presentation of arguments. That rush-atmosphere is hardly conducive to appropriate consideration.

An amendment was considered yesterday on their bill expressing the sense of the Senate to oppose a $400 million loan from the World Bank to Mexico to establish a steel industry. Debate on that important matter was limited to 15 minutes, slowing the prevailing attitude that the Senate should rush to judgment on such important matters. That procedure, in my judgment, is most unwise and the Senate should take the time which it needs to give appropriate consideration to such issues.

Accordingly, I believe that it is unwise to establish a practice for premature resort to cloture. The Senate has ample time to consider these matters.

On Monday last, 6 hours of debate were set on a resolution which, most agreed, did not require that much time. In any event, the 6 hours were not used.

There is ample time during the course of the workday for the Senate to be in session to give appropriate time to consider issues like the pending bill and the World Bank loan. Accordingly, while I strongly support the pending substantive legislation, I am equally strongly opposed to this cloture practice and believe the Senate should reject it.

## ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I simply take a moment to remind all offices that the rollcall vote on the motion to invoke cloture will begin at 9:30 a.m., some 5 minutes from now. That will be a 30-minute rollcall vote and the call for the regular order will be automatic at the conclusion of the 30 minutes.

So if there are any offices that are listening and I am sure there are, I suggest that they make preparations for reminding all Senators that the vote is rapidly approaching.

Mr. President, I yield the floor.

## CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that morning business be closed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the mandatory quorum was waived. So I will not suggest the absence of a quorum. Morning business has been closed.

The ACTING PRESIDENT pro tempore. The majority leader is correct.

Mr. BYRD. Very well.

Mr. President, I suggest what I intend to be a short quorum, and if no Senator objects to the calling off of this quorum, it will be a short quorum. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

## POLYGRAPH PROTECTION ACT OF 1987

The ACTING PRESIDENT pro tempore. Under the previous order the hour of 9:30 o'clock a.m. having arrived the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators in accordance with the provisions of Rule XXII of the Standing Rules of the Senate hereby move to bring to a close the debate upon the committee substitute to the bill S. 1904, Polygraph Protection Act of 1987.

Senators Edward M. Kennedy, Howard Metzenbaum, Brock Adams, Lowell Weicker, Patrick Leahy, John F. Kerry, Tom Harkin, Thomas Daschle, Orrin G. Hatch, Don Riegle, Christopher Dodd, Barbara A. Mikulski, Timothy E. Wirth, J.J. Exon, Dale Bumpers, and Robert Stafford.

## VOTE

The ACTING PRESIDENT pro tempore. By unanimous consent the quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the committee substitute to S. 1904, the Polygraph Protection Act of 1987, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. DIXON). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 77, nays 19, as follows:

[Rollcall Vote No. 42 Leg.]

YEAS—77

| | | |
|---|---|---|
| Adams | Cohen | Glenn |
| Armstrong | Conrad | Graham |
| Baucus | Cranston | Grassley |
| Bentsen | D'Amato | Harkin |
| Bingaman | Danforth | Hatch |
| Bond | Daschle | Hatfield |
| Boren | DeConcini | Heflin |
| Boschwitz | Dixon | Heinz |
| Bradley | Dodd | Hollings |
| Breaux | Domenici | Humphrey |
| Bumpers | Durenberger | Inouye |
| Burdick | Evans | Johnston |
| Byrd | Exon | Kassebaum |
| Chafee | Ford | Kasten |
| Chiles | Fowler | Kennedy |
| Kerry | Murkowski | Sanford |
| Lautenberg | Nunn | Sarbanes |
| Leahy | Packwood | Sasser |
| Levin | Pell | Shelby |
| Lugar | Proxmire | Simpson |
| Matsunaga | Pryor | Stafford |
| Melcher | Reid | Stennis |
| Metzenbaum | Riegle | Weicker |
| Mikulski | Rockefeller | Wilson |
| Mitchell | Roth | Wirth |
| Moynihan | Rudman | |

NAYS—19

| | | |
|---|---|---|
| Cochran | McClure | Symms |
| Garn | McConnell | Thurmond |
| Gramm | Nickles | Trible |
| Hecht | Pressler | Wallop |
| Helms | Quayle | Warner |
| Karnes | Specter | |
| McCain | Stevens | |

NOT VOTING—4

| | |
|---|---|
| Biden | Gore |
| Dole | Simon |

The PRESIDING OFFICER. On this vote, the yeas are 77 and the nays are 19. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

## POLYGRAPH PROTECTION ACT OF 1987

The Senate continued with the consideration of the bill S. 1904.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, may I ask a question of the distinguished acting Republican leader? Included in the order last evening was a provision to allow for up to three amendments to be called up from the other side of the aisle. What are the prospects, may I ask of the distinguished acting Republican leader, on that matter?

Mr. SIMPSON. Mr. President, I would advise the majority leader that the Senator from Texas has indicated to me that he would not be presenting those amendments. He will withdraw those amendments. Perhaps the Senator from Texas wishes to comment upon that.

Mr. BYRD. I yield.

Mr. GRAMM. If the distinguished majority leader would yield.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I had a discussion this morning with the distinguished Senator from Massachusetts, a discussion dealing with the area of the pharmaceutical industries. He gave me assurances that would be dealt with, and based on that, we are not offering additional amendments.

Mr. BYRD. I thank all Senators. I ask unanimous consent that no further amendments now be in order, which would leave the debate time in position for Senators to speak on the matter. I believe it is 40 minutes equally divided.

Mr. SIMPSON. That is correct.

Mr. BYRD. I thank the acting Republican leader, and I thank all Senators, particularly the Senator from Texas [Mr. GRAMM] and the Senator from Massachusetts [Mr. KENNEDY].

Mr. KENNEDY. Mr. President, I know the Senator from Utah wants to speak on this bill. We just had a vote. We will be glad to do whatever the leadership wants, as long as we wind up the consideration, have third reading, and have the vote after that. I imagine that will be in a short period of time.

Mr. BYRD. Very well. Mr. President, shall we count on the full use of the 40 minutes?

Mr. KENNEDY. Mr. President, I think it will be less. I plan to speak just briefly, 4 or 5 minutes. The Senator from Utah wants to speak for 4 or 5 minutes. He is at the Judiciary Committee now, and he wanted to be notified.

I do not believe anyone has contacted us on our side. I think most of those who wanted to speak have spoken.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The acting Republican leader.

Mr. SIMPSON. Mr. President, let me suggest, if I may, 20 minutes are allocated on our side, the side in opposition to the bill. Senator GRAMM has a conflict, and perhaps if he goes forward for 5 minutes and perhaps if Senator KENNEDY would like to go forward, we can do it a bit in reverse. We can have Senator QUAYLE speak in opposition, and then yield back.

Mr. KENNEDY. Fine.

Mr. BYRD. Mr. President, for the time being, I believe the Senators would prefer to leave the 40 minutes in place, if it is needed. It may not be needed, and the respective offices on both sides should take that into consideration, that the vote on final passage may occur earlier than anticipated.

The PRESIDING OFFICER. There remain 40 minutes of debate evenly divided on the bill.

Mr. KENNEDY. Mr. President, I would be glad to yield such time as the Senator from Texas desires.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will be brief. We have debated this bill now for several days. I think Members at least have come to a conclusion as to where they stand on it. I for one think the issues are not as clear as I wish they were.

No one believes that polygraphs are an infallible tool in ferreting out information. I think one thing that we have all come to understand is that the polygraph is a very dull tool. It is a procedure that has inherent problems, and I think, quite frankly, all of us are concerned about the intrusive nature of the polygraph examination in terms of putting people under stressful situations and creating the potential that

people are going to turn up negative tests when, in fact, they are telling the truth.

I think everyone in this great body is concerned about the impact on people who test negative and who are affected by it. I think also there is real and legitimate concern about how the tests are administered. But I feel this bill goes far beyond the response that is justified by these concerns.

What a great paradox it is that we go on at great length about the problems with the polygraph exam, and we take steps that deny the private sector the right to use it in prescreening and severely restrict its use, under any circumstances, for the private sector, and yet we totally exempt the Federal Government, State governments, and local governments.

It is as if what government does is so important, so critical to the future of the Republic, that we are forced in government to use dull, inefficient, intrusive tools, but the private sector is so insignificant, so irrelevant to the future of America that the sector of the economy that pays the bills and pulls the wagon is excluded from the use of a tool which government clearly finds in some circumstances indispensable.

I know the distinguished Senator from Massachusetts feels strongly about the use of polygraph. He has spoken with great effectiveness about the inherent problems with the test. I would like to remind my colleagues that with all the problems we have with polygraph, polygraph is used by all of the intelligence agencies that work on behalf of our Nation.

We found out one thing clearly from the Walker spy case, and that is, if the Soviet Union viewed polygraph in the same way that the GAO study viewed it, they clearly have not shown it in terms of their policy because they told Walker: "You are so important to us that we don't want you to put yourself in a position where you have got to take a polygraph examination."

So do I think there are problems with private use of polygraph today in the Nation? Yes. But I think we are going too far, for all practical purposes, in excluding the use of polygraph for prescreening and so severely limiting it in other uses as to render it virtually ineffective.

I think there are many uses. Whether we are talking about polygraph for people who are flying airplanes, driving trucks and buses, driving trains, where drug tests have an inherent problem that if you are not using the drug at the time you are given the test it does not show up, I for one am loath to preclude the use of this test, imperfect though it be.

Forty States have responded to the problems discussed here. It is not as if no other element of government has become concerned about this problem. I, for one, do not understand why suddenly this is a Federal problem. I happen to believe that the State that I represent, the great State of Texas, is perfectly competent in setting standards for the use of polygraph, whether it is being used to detect whether airline pilots are using cocaine or whether it is being used to determine where convenience store cash register operators are stealing from the company and therefore stealing from the people who are buying milk, bread, and eggs from the store.

I think the State of Texas is competent to determine what kind of standards ought to be used, in using polygraph, to ask people who are going to work in day care centers whether or not they have ever been indicted or convicted for child molesting.

Now, I know that there are always other ways of going back into all these records. I am not saying that a failed polygraph examine is in and of itself proof of anything other than a failed polygraph examine, but at least it allows you to then go back and look at the records more carefully. I think this bill goes too far. I think it unnecessarily and unreasonably tramples on States rights and I urge my colleagues to vote no.

Do I think this bill is going to pass? Yes, I do. Do I think, given the fact that the House has already cast a vote that would sustain a Presidential veto, that the President may look at the final product and decide that this is not the way to go and veto it, and therefore the vote would be on sustaining that veto, I do not know whether that is going to happen or not, but I think it is a clear possibility. If we get a substantial vote here, I think that gives the President more leeway to look at this bill.

I do not believe this is a wise bill. I do not think it is in the public interest. I do not think it balances the rights of people who do not want to take polygraph examination with the rights of people who do not want someone using narcotics while they are flying planes or driving buses or driving trains. There ought to be some reasonable compromise. If the problem is with private sector testing and the procedures, perhaps we need some Federal guidelines. But to come in and simply outlaw prescreening, to so severely limit the use of polygraphs for the private sector when we in no way affect the ability of the public sector, it is as if we are not concerned about privacy and the rights of people. If those people happen to be working in wild flower research at the Department of Agriculture, suddenly we are not concerned about their rights and the problems with this test. If they happen to be working as security guards at a bank or if they happen to be working in child day care centers or they happen to be flying an aircraft, suddenly we are concerned that no one should have a right to ask them a question and have some ability to determine whether they are answering that question honestly so that they might look behind that question. So I know there are those who are concerned about abuses, and so am I. But one abuse does not justify another.

In my humble opinion this bill is not in the public interest. I urge my colleagues to vote no.

I reserve the remainder of my time.

Mr. President, I am not sure who controls time on this side. I think it was equally divided.

The PRESIDING OFFICER. That is correct.

Mr. GRAMM. I would like the distinguished Senator from Indiana to control the time since I have to leave the floor.

The PRESIDING OFFICER. The Senator from Texas has yielded the floor. Who yields time?

The Senator from Indiana controls the time in opposition. Who yields time?

Mr. QUAYLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Indiana is advised there are 11 minutes and 8 seconds remaining on his side. The Senator from Indiana is recognized for such time as he may need.

Mr. QUAYLE. I yield myself 8 minutes.

Mr. President, first, I congratulate the chairman of the committee, Senator KENNEDY, on the legislation before us. He and Senator HATCH have fought valiantly, and I think that they will in fact have an overwhelming vote. There was friendly but adversarial discussion on this bill.

My opposition goes to this bill on two fundamental points. One, I do not believe that the Federal Government should involve itself in something in which the State governments and State agencies are doing quite well. It has been pointed out that a number of States which in fact already have either a ban or requirements on polygraphs are taking it very seriously. I think this is the beginning of getting into preemployment screening, and I do not know where it is going to end.

Once we start with lie detectors, we will get on to perhaps drug testing, although the Senate went on record yesterday saying it would not do that. But drug testing is not reliable in many cases either. We will get into all sorts of other preemployment things, perhaps like the preemployment psychological tests that some might say are harassing or intimidating. Once the Federal Government starts down

this road, I do not know where it will end.

As far as principle, I think that is a very fundamental point that I simply cannot overcome in trying to support this bill, even though I, like others, have a great lack of confidence in lie detector tests. I cannot help if employers want to rely on information that is not valid. If they want to make dumb mistakes, I do not think it is the role of the Federal Government to clear up those mistakes.

Second, I do believe there is a tinge or perhaps a bit of hypocrisy in this bill. What we do is say it is OK to do in certain instances, particularly for the Federal Government, but it is not OK for the private sector. As a matter of fact, even if we would apply the standards of polygraphers for the Federal Government, that still would not be OK for the private sector. Once again we are saying that Washington knows best.

Unfortunately, I had the Washington syndrome come home last night as I was unable to attend the game but Washington beat the very capable, skillful, dedicated Indiana Pacers at the Capital Centre, devastating them. Washington won out in that basketball game last night and now Washington is going to win out once again today. I could not control or influence the outcome of that basketball game. I do believe, however, we have had some impact on what Washington is going to do now to my State and to the rest of the country on this particular vote.

Mr. President, many Senators have come to me and asked how they should vote on this bill. And I am going to say now to Senators who have asked me that, if they have any desire whatsoever to vote for this bill, they ought to go ahead and vote for it. I have philosophical concerns about it, particularly the Federal preemption and the Federal Government getting involved in something I do not believe it should, and I do not know where that road leads us, but I say this is going to be construed more as a political vote.

It is very important to some political constituencies. I know that organized labor has this very high on their agenda. To many of the so-called civil rights groups, I am sure this will be cast as perhaps a civil liberties vote.

So I would say that Senators on this side of the aisle particularly that are inclined to give maybe the administration the benefit of the doubt and want to go along in case, as the Senator from Texas said, there may be a veto, I would say there is almost no chance at all for a veto. I do not think it is going to happen. Therefore, I do not think Senators, who have some concern about this and are worried about maybe not changing their vote on it when the veto comes back—there is not going to be a veto. This administration will sign this bill.

This administration a year ago opposed this bill on the fundamental philosophical point that this was an unreasonable Federal intrusion and something that was clearly relegated to the States. This year they did not. This year they set up a statement of opposition on three minor concerns that they had. This administration on this bill is caving like a house of cards. They in fact will not veto this bill. And therefore why should, unless you are just really philosophically opposed to this, you go out on a limb on something that is not politically popular, and vote in opposition to it?

So I would say to those Senators who have still not made up their mind that as far as my advice to them, if you want to vote for this bill, you have any inkling that you want to be on record on the political right side of the issue, and you do not have the major philosophical objection as far as the Federal Government, go ahead and vote for it. Do not worry about a veto. A veto is not going to happen. This administration does not have the backbone at this time to veto this bill. They will not do it. As a matter of fact, you could probably almost send anything down there under this bill, and it will get passed. They will sign it.

They may say if you go too far in conference we might not sign it. Well, there will be lots of threats, a lot of joking. But I know this administration pretty well. I deal with them, dealt with them for a number of years. And on this issue from a year ago their position has changed dramatically. They have folded up shop like a house of cards, and they will not veto this bill.

I might just say, Mr. President, that this has been a debate on what I consider to be a very minor bill. I do not consider this a major piece of legislation. I think it is a piece of legislation that did not warrant the Senate's attention. I do not think it warranted the 3 days we took on this bill. There could have been ways to delay this bill even further. We decided not to because it just simply was not beyond the few that have the philosophical opposition. So there is no use to prolong debate.

The cloture has been invoked. We can see where the votes are. There were something like 122 amendments that were filed that could have been called up in a postcloture type of filibuster. It could have gone on and on and on on a very minor piece of legislation. It could have been a very long and protracted debate but we decided there was no reason to be a Don Quixote on this, that there will be other issues that will come along that will be far more important legislation.

But even on this matter, having 120-some amendments on the desk on postcloture, spending 3 days invoking cloture, also we now have an arrangement for not putting a sense-of-the-Senate resolution on the arresting of Senators on this bill. We now have 5 hours I believe dedicated to the issue after this bill. So it became much more entangled with much more debate than it indeed deserved. But I think that these issues are important. I am still, as I said, principally philosophically opposed.

The PRESIDING OFFICER. The Senator's 8 minutes have expired.

Mr. QUAYLE. I yield myself an additional minute.

Mr. President, I am still opposed to this bill. I think the role that we are on involving ourselves in is something that has been relegated to the States properly—they have done a good job—and is something that I cannot support. I will vote in opposition to that because of the double standard I think it sets. It is a philosophical opposition that I have.

But once again, those Senators that are inclined to vote for this or trying to think this issue through, if you have any inclination at all to vote for this bill, you might as well do it. It will be signed. You will not have to face a veto because the administration will simply sign this legislation in my judgment.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Indiana has 2 minutes and 32 seconds remaining.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I would like to take a few minutes to say why we are here today and why we are where we are today. After 3 days of debate and numerous amendments, we are on the verge of passing a significant change in Federal labor laws. Why? Because the bill before us, S. 1904, is a carefully crafted compromise designed to protect both individual rights and employer rights.

Mr. President, I believe my record in this body is second to none when it comes to defending the rights of the private sector. But I have been a willing participant in fighting for employee rights as well. That is why I am proud to be the lead cosponsor of this legislation along with the sponsor, Senator KENNEDY. It protects both employers and employees and does so in a manner that does not violate the other fundamental interests.

The record is fairly clear on the limitation of the polygraph. But do not take my word for it. Do not take the committee word for it. Look at the scientific record. All the scientific data indicates that preemployment polygraphs cannot—I reemphasize that word "cannot"—predict future performance. The machine was simply

not designed to predict future performance.

Given this fact and the fact that more than 2 million Americans are given polygraphs every year, we know that even under the best of circumstances, with the best polygrapher doing the best test and performing the best analysis, 300,000 honest Americans are branded as liars every year. That is pure and simply wrong.

That is a stigma that they are going to wear like a scarlet letter every day of their remaining lives. Let us change the world "lies" to "careers."

The evidence also indicates that a carefully crafted polygraph test given in conjuction with an investigation can be of assistance. This bill permits all employers to use the polygraph in such instances so long as the results of the exam are not the sole basis of the resulting employment action. In other words, the bill is a reasonable and responsible attempt to focus use of the polygraph where it is likely to be the most accurate.

Mr. President, if polygraph testing is so critical to screening of felons and drug abusers, if polygraph testing was the last defense against anarchy in the workplace as the opponents on the floor have argued, then one would imagine that States like New Jersey where the polygraph is already banned would be awash in criminality. The State's economy should be devastated on the brink of collapse but of course everybody knows that it is not.

Over the last 3 years I have asked every employer organization that has met with me on this issue to pull together data, hard evidence, that demonstrates how the polygraph ban has hurt these States. To this date, I have received absolutely no data because there is none. We have also heard about how effective the polygraph is in scaring confessions out of applicants.

I do not doubt for a minute that the polygraph is a very terrifying experience. But really, is this body really ready to say that we feel it is so important for employers to be able to terrify a few applicants into confessions that we are willing to pay the price of branding 300,000 honest Americans as liars every single year? I think not. I am not willing to do that.

Mr. President, I wonder how many of my colleagues would like to take a polygraph on a regular basis. I wonder how many of them would like to take a polygraph, period. I wonder why anybody would want to take one. There are some instances where perhaps we have to utilize them. This bill takes care of those instances. But I do not think anybody wants to take them.

I wonder how many of us would like to see our chances to represent our respective States hang upon a 15-minute special polygraph given by some ill-trained, unbonded examiner of, you know, someone else's choosing.

Well, that is disturbing to me. I think it is disturbing to many other people. Of course, with that understanding, let us just welcome everybody to the real world of the polygraphing in the private sector. This bill is going to change that.

Mr. President, employers are not without tools to screen applicants. But unfortunately some, I would say the best, tools really take some time: Checking résumés, references, personal involvement in interviews, testing where appropriate, and knowing how to ask the applicant questions. These methods are still the key to hiring people. We all know that, because that is the way we hire our staffs here.

Finally, Mr. President, some have argued that the banning of free employment polygraph tests will destroy the private sector. As the ranking member of the Committee on Labor and Human Resources, I can say with great confidence that this bill is not an economy destruction bill. I can guarantee that a lot of them will come out of this committee in the future, in this year. You will be able to know when they come, because I will be right here arguing against them, and I will be arguing vociferously against them, but this is not one of those bills. S. 1904 is a carefully crafted compromise designed to protect employer rights and the rights of employees. I hope my colleagues will support this bill and give individuals throughout the Nation some needed added protection.

Mr. President, I appreciate the efforts made by our staffs on this bill, and I appreciate the leadership of Senator KENNEDY on this bill. He has been prepared and has done a terrific job, and he has explained many good reasons why this bill is important. I have enjoyed working with him and will enjoy working with him through the rest of this process.

This bill deserves to be passed for the benefit of employers and employees. It is the right thing to do.

I am sick and tired of people using this instrument in an improper way, knowing that with 15-minute quickie polygraphs, virtually all of them are not accurate.

I ask unanimous consent to have printed in the RECORD a letter from the National Federation of Independent Business and a letter from the National Restaurant Association.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
*Washington, DC, March 1, 1988.*

Hon. ORRIN G. HATCH,
*U.S. Senate,*
*Washington, DC.*

DEAR ORRIN: On behalf of the more than 500,000 small business members of the National Federation of Independent Business (NFIB), I want to convey our support for your efforts to delete the mandatory posting requirements (Section 4) contained in S. 1904, the Polygraph Protection Act of 1987. If a roll call vote occurs on your amendment, it will be a Key Small Business Vote for NFIB in the 100th Congress.

As our field representatives travel the country each day renewing memberships, we ask our members to respond to a survey of eight questions. The questions on the survey are changed each quarter. Though not taken from a statistically valid stratified sample, the responses are certainly indicative of the pulse of small business at the time they are taken.

On the issue of polygraph examinations, 94.7 percent of those surveyed do not administer polygraph tests to prospective employees. With regard to current employees, 93 percent do not administer polygraph exams.

Government paperwork, whether state or federal, remains a burden to small businessmen and women. The notification requirement in S. 1904 serves no useful purpose in our view. It is patently absurd to require employers to post a notice for an action they cannot take. Therefore we support your efforts to relieve small business of this improper burden.

Once again, Orrin, I thank you for your efforts on behalf of our nation's small employers.

Sincerely,

JOHN J. MOTLEY III,
*Director, Federal Governmental Relations.*

---

NATIONAL RESTAURANT ASSOCIATION,
*Washington, DC, February 26, 1988.*

Senator ORRIN G. HATCH,
*Washington, DC.*

DEAR SENATOR HATCH: It is my understanding that Senate floor action is expected on S. 1904, the Polygraph Protection Act of 1987, in the near future. As always, thank you for your efforts on behalf of the National Restaurant Association in crafting this legislation.

S. 1904 addresses a primary concern of the business community—it preserves the ability of employers to utilize polygraphs in the event of theft or misconduct in the workplace. This bill is significantly less restrictive than the House bill proposing an absolute ban on polygraph testing, which the association adamantly opposes.

I urge your ardent protection of S. 1904 section 7(d) provisions that preserve incident-specific polygraph testing. Only if these provisions are retained during floor consideration and in conference, can the association maintain its support of polygraph legislation.

Many thanks for your continued interest in the foodservice industry.

Sincerely,

MARK GORMAN,
*Senior Director, Government Affairs.*

---

S. 1904—POLYGRAPH PROTECTION ACT

(Kennedy (D) Massachusetts and 13 others)

S. 1904 differs in various respects from its House counterpart, H.R. 1212. The President's senior advisors have indicated that they would recommend that H.R. 1212 be vetoed. However, the Administration also strongly opposes S. 1904 unless amendments including the following are made:

Expand section 7(d) (which would permit polygraph examinations to be administered

in connection with ongoing investigations of business loss or injury) to allow the investigation of serious workplace problems that threaten not only material loss, but also the health, safety and well-being of other employees;

Revise section 8 to transfer from the Department of Labor to a more appropriate agency the responsibility for establishing standards governing certification of polygraph examiners; and

Delete provisions in section 6 which would authorize private civil actions by employees or job appliants against employers who violate the provisions of S. 1904. These provisions are unnecessary given the other enforcement provisions contained in the bill.

Mr. HATCH. Mr. President, I should like to make a statement on administration policy.

While it is clear that the administration still opposes S. 1904, they have not sent us a veto threat.

I find this shift of position encouraging. I look forward to working with the administration during the conference, and I hope we can report a bill that the President will be able to sign.

Mr. President, I believe that the administration has been able to look and realize that there are some really good arguments for this particular legislation. I think they also understand that this legislation is a carefully crafted compromise among all sides and that we have worked hard to pass this legislation.

I hope that by the vote today, we send the message that this legislation deserves to become law. I will do everything I can through the remaining part of this process to see that it does.

I compliment our committee and our staff members, and certainly Senator KENNEDY and others who have played an important role.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts is advised that his side has 11 minutes and 41 seconds remaining.

Mr. KENNEDY. I yield myself 8 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 8 minutes.

Mr. KENNEDY. Mr. President, as we come to the final moments of discussion of this legislation, I want to take a moment of the Senate's time. First, I wish to express my appreciation to the Senator from Utah [Mr. HATCH], who is the ranking minority member of the Committee on Labor and Human Resources, the former chairman of this committee, with whom I have had the opportunity to work closely in the shaping and the drafting of this legislation. It has been an ongoing and continuing challenge.

Senator HATCH had introduced other legislation dealing with polygraphs in the last Congress. We were unable to get floor consideration of that legislation, and we have gone back to the drafting board. We now come to the Senate and urge our colleagues to vote favorably on what we consider to be an extremely important piece of legislation that will provide a much greater degree of dignity to the American worker, fairness to the worker, and a greater sense of realism in terms of the use and abuse of polygraphs in the workplace.

Mr. President, we do not take the Senate's time lightly. We believe that this legislation is important. Over the course of this past year, we have been able to work with a number of individuals, corporations, and trade associations in the private sector in fashioning and shaping this legislation. I, for one, am very grateful for their help, their assistance, and their insights as well as for their cooperation and support. We have worked with a number of the representatives of workers who have given enormously revealing testimony of what has happened to many of them and is happening to many of them in different job sites all across this country. It is indeed a chilling story that has been revealed to us, not only during the course of our hearings but also in private conversations. We are grateful to them for their help and support.

In the past hours, we have received some information from the administration in connection with reservations they have expressed about this particular approach. We have been very much aware of the division that had existed within the administration with respect to their official position. Some of the agencies within the Justice Department, who have commented upon the value of polygraphs in the past, had differing views from the position which has been taken by the Department of Labor.

By and large, I feel that their involvement has been a constructive one; and we hope that before the ink is dry on this legislation, we might be able to persuade them, and to gain their support. I think their impact has been important and useful, but I think the legislation must come into law with or without their support. I would prefer that we have their support.

Mr. President, as we come to a final conclusion on this matter, I want to remind our colleagues why this measure is of importance. We have more than 2 million polygraphs given in this country every year, and that number has grown dramatically, almost exponentially, all across our Nation.

It is fair, I believe, in evaluating the effectiveness of the polygraph, in trying to tell the difference between truth and deception, for Members of Congress to speak on the issue. In many instances, it is a instrument which is abusing the rights of millions of workers and in many instances scarring those individuals in ways that they will remember for the rest of their lives, and that their families will remember for the rest of their lives.

We have been extremely fortunate in having the Office of Technology Assessment do a very thorough and comprehensive review of all the studies that have been done on polygraph over a period of some 18 years, right up to the most modern ones. We have a number of experts in this area. One of the most significant and thoughtful is Professor Raskin, of the State of Utah.

What we find are some undeniable truths: With the current number of polygraphs taking place in this country, there are going to be up to 320,000 individuals, workers, who will be wrongfully labeled by the polygraph. Two-thirds of those individuals will be telling the truth but labeled deceptive. What that means in terms of those families, what that means in terms of the possibilities of future employment, what that means in terms of their future is one of the most heartrending stories that affect working men and women in this country.

That problem is growing. Somehow or other even on the floor of the Senate, we have the false understanding or false impression that we are getting truth with the administration of the polygraph.

The scientific and medical information is that truth is only part of the story and a small part of the story.

We have not ruled out all polygraphs, Mr. President, and we have recognized that under certain circumstances when you have a reasonable suspicion that individuals have been involved in a specific economic loss or injury, we permit under limited circumstances the use of the polygraph. Under these circumstances, the possibility of gaining the truth is enhanced dramatically, and under these circumstances the polygraph itself will not be used solely in making the ultimate judgment in terms of the employment possibilities for that individual, without additional supporting evidence. So, we believe that we have here recommended to the Senate an equitable balance.

The PRESIDING OFFICER. I must reluctantly advise the Senator the time has expired.

Mr. KENNEDY. I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for an additional 2 minutes.

Mr. KENNEDY. With this balanced bill, that has been described in the past days, we believe that we are meeting our responsibilities both to the workers and to the private sector.

Mr. President, in just making some concluding remarks, I want to remind our colleagues who are concerned about the Federal aspects of this legislation that this is an intrusion in the States, that one of the great States righters of this body and one of the

great libertarians of this body was a distinguished Senator from North Carolina, Senator Ervin. No one ever accused Senator Ervin of wanting to extend the long arm of the Federal Government, but those of us who had the opportunity to serve with him know of his deep devotion to the constitutional civil liberties of this country, and it was Senator Ervin who said over a decade ago that the polygraph is "20th century witchcraft". He was right.

So, Mr. President, we understand that the polygraphs do not stop lies; in too many instances they tell lies.

It is important that we in this body are going to put the polygraph, which has been used as an instrument to intimidate and to terrify so many workers in this country, on the scrap heap, so to speak, with other instruments which have been used in the same manner in the past.

I again think that with this legislation we are going to see the day when the average worker in this country is going to be able to walk into his or her workplace with the sense of dignity and self-respect.

With this legislation, I think we are striking a blow for greater sense of decency not only for millions of workers but for American society.

I urge my colleagues to vote in favor of this legislation.

I withhold the remainder of the time.

The PRESIDING OFFICER. The Senator from Massachusetts is advised he has 1 minute and 15 seconds remaining.

Who yields time to the Senator from Mississippi?

Mr. QUAYLE. I yield the remainder of my time to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi has 2 minutes and 32 seconds.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Indiana for yielding to me. He has provided strong leadership in our committee on this issue and I commend him for that.

In looking at the proposal before us, one aspect jumps out at the Senate. Here again we are being asked to substitute Federal regulations, Federal judgment on issues such as qualifications for the performance of a job, licensing in the States, for the judgment and wisdom of State legislators and State government officials, for no good reason.

I say that, Mr. President, because in States such as mine—where for 20 years there has been a law on the books regulating the administration of polygraph examinations and the licensing of polygraph examiners—State regulation has worked very well.

While workers and prospective employees are protected, those who have a legitimate interest in the use of polygraphs as an investigative technique—the State government, city governments, police departments, other investigators—are permitted to use them because they have been shown to be useful tools in the investigative process.

One witness before our committee testified that in States where there are no restrictions on the use of polygraphs for prospective employees or those in the workplace, losses from inventory are 25 percent less than in States where polygraphs are banned, such as in Massachusetts and other States.

The evidence is clear that passage of this legislation today will increase consumer costs in many areas and increase losses in certain businesses.

Others who testified in opposition to the bill included the Jewelers of America, American Retail Federation, and others who have had day-to-day practical experience, in the workplace in selective use of the polygraph examination.

Obviously, the committee felt that the polygraph examination could be useful and was appropriate in some circumstances, since it exempted many areas of Government activity and many contractors who do business with the Federal Government.

So, in the wisdom of the Federal Government, on the one hand, the polygraph is lawful and appropriate to be used and, on the other, it is not.

I suggest, Mr. President, that we vote against this bill. Let us leave the regulation of the use of polygraphs to the States where it rightfully belongs.

Mr. FOWLER. Will the Senator from Massachusetts yield for a question?

Mr. KENNEDY. I certainly will yield for a question from the Senator from Georgia.

Mr. FOWLER. We need the continued use of the polygraph for preemployment screening of those who handle controlled substances. The House passed by a very wide margin such an exemption to the Williams bill—by a vote of 313 to 105. Would the Senator from Massachusetts be willing to accept that language in the conference between the two bodies on this legislation?

Mr. KENNEDY. Senator HATCH and I have discussed this, we have discussed this with the other Senate conferees, discussed this with the sponsors of the House amendment, and discussed this with the principal sponsors and likely House conferees. We will be willing to agree to recede to the House conferees insistence on the amendment dealing with the employees who handle controlled substances.

Mr. FOWLER. I thank the Senator from Massachusetts, and will not offer my amendment.

Mr. DURENBERGER. Mr. President, I rise today in support of S. 1904, the Polygraph Protection Act of 1987. This bill is designed to curb the abuses of widespread polygraph testing and to protect the rights of individuals who are subjected to the lie detector test. I applaud the efforts of my distinguished colleagues from Massachusetts and Utah, Mr. KENNEDY and Mr. HATCH, in crafting a sensible, fair response to the growing misuse and abuse of polygraph examinations.

Over the last decade, private employer's use of polygraphs has increased dramatically. The American Polygraph Association estimates that approximately 98 percent of the over 2 million polygraphs given each year are administered by private employers. Only 2 percent of all tests are administered by the public sector. Mr. President, I find this fact alarming. Over 2 million tests are being given each year; yet, there are no uniform standards for polygraph machines, there are no uniform licensing requirements for examiners, and there are no uniform protections for individuals who take a polygraph examination. Up until now, the Federal Government has relied upon State legislatures to regulate the use of lie detector tests. However, I believe that the time has come for Congress to establish national minimum standards for polygraph examinations.

S. 1904 bans the use of lie detector testing for preemployment and random employee screening. Employers have increasingly been using lie detectors to test job applicants and current employees to determine character traits such as honesty and trustworthiness. However, there is no scientific evidence to suggest that a polygraph test can accurately or reliably predict the honesty or dishonesty of an individual. The polygraph test does accurately measure stress by plotting changes in three physiological responses—blood pressure, respiration, and sweat gland activity—but it cannot pinpoint the cause of stress. And because there is no physiological response unique to lying, stress caused by anger, fear or anxiety will produce the same physiological reaction as stress caused by deception.

As a result, many honest individuals are being denied employment because they have failed a polygraph exam, while many dishonest individuals are being employed because they were able to outsmart a machine or an examiner. Mr. President, polygraph examiners simply cannot identify stress caused by deception, nor can they assess such obscure qualities as honesty or trustworthiness in a 15-minute interview. Even in criminal investigations, where there is a scientific basis for using the polygraph, interviews of suspects regarding their involvement

in a specific incident last at least 2 hours.

S. 1904 does recognize the scientific basis for using the lie detector test in investigations of specific incidents. The bill allows employers to use the polygraph examination when investigating an economic loss; however, the employer must meet the following requirements before requesting an examination. First, the employer must have experienced an economic loss, such as theft, embezzlement, or industrial espionage. Second, the employer must have reason to believe that the employee had access to the property in question. Third, the employer must have reason to suspect that the employee was involved in the incident. Finally, the employer must file a police report; an insurance report; or an internal statement describing the details of the situation. Once an employer has met these requirements, he or she may request an employee to take a polygraph test as long as the test does not violate State or local law, or any collective bargaining agreement.

Under the bill, an employee has the right to refuse to submit to the polygraph examination. And, his or her employer is prohibited from taking any adverse employment action based solely upon that refusal. An employer may only discipline or dismiss an employee when there is additional supporting evidence.

If an employee does submit to a polygraph examination, S. 1904 provides important protections. For example, an employee must be advised of his or her rights in writing prior to the examination, and the employee must be given an opportunity to review all questions which will be asked in the interview. S. 1904 also defines the types of questions an examiner may ask, and specifies that the employee may terminate the test at any time.

Again, once the interview is completed, an employer may not take disciplinary action against an individual based solely upon the results of the polygraph examination. However, evidence used to support dismissal may include statements or confessions made during an examination.

To protect the privacy rights of the tested employee, S. 1904 provides that the information disclosed during an examination may not be released to anyone other than the employee or employee's designee, the employer, government agencies authorized to conduct such tests, or any person authorized by a warrant to obtain such information. Because irrelevant, yet highly personal, details are often disclosed in a polygraph examination, I believe that this provision is a particularly important safeguard against the misuse of information obtained in an interview.

The final component of S. 1904 governs the regulation of polygraph machines and examiners. This legislation requires the Secretary of Labor to set minimum standards for polygraph examiners relating to conduct, competency, bonding, instrumentation, training, and recordkeeping. I believe uniform standards are necessary to ensure a minimum degree of accuracy in an already unreliable test, and to prevent employers from taking employment action based on bad results obtained from a faulty instrument or an inexperienced examiner.

Federal, State, and local governments are all exempt from the provisions of S. 1904, as are Federal Government contractors with national security responsibilities. As former chairman of the Senate Select Committee on Intelligence, I recognize the necessity of a "national security" exemption. The polygraph examination has limitations, but it does play a role in the effort to protect highly sensitive information.

Mr. President, opponents of S. 1904 use the above exemptions to argue that polygraph testing should be good enough for use in the private sector if it is good enough for use in the public sector. I don't buy this statement, because the Federal Government has in place very strict rules governing lie detector testing. For example, the Federal Government trains its own examiners, defines who can be tested, and prohibits the denial of employment based solely on the results of a polygraph. In general, Federal Government uses the lie detector test as only one component of an extensive background investigation.

Because S. 1904 sets minimum national standards for use of the lie detector test, this bill will only affect States which have no polygraph regulations or have less strict laws. Therefore, in States where use of the lie detector test has been banned, such as my home of Minnesota, S. 1904 will have little effect.

Mr. President, I would also like to express my support for the amendment offered by my distinguished colleague from Ohio, Mr. METZENBAUM, on an issue unrelated to polygraph testing. My colleague's amendment, which I am pleased to cosponsor, expresses this body's opposition to the proposed $400 million World Bank loan to the Mexican steel industry. The World Bank has proposed to lend Mexico $400 million to restructure and modernize an inefficient steel industry. However, I cannot understand how this loan will assist economic development when there is already an excess capacity of world steel production. Mexico will be unable to repay its World Bank loan and unable to repay its loans to American banks if it cannot sell steel. And although I agree that it is in the best interest of the United States to promote growth in the Mexican economy, I do not believe that a $400 million loan to the Mexican steel industry will provide steady jobs and stable growth. This loan will only put Mexico deeper into debt and will further harm an ailing United States steel industry. I urge my colleagues to send a strong message to the World Bank that it should reject the proposed loan to Mexico.

Mr. President, I support S. 1904 because I believe that American workers need protection from the widespread abuse and misuse of the lie detector test. The bill crafted by my colleagues from Massachusetts and Utah is a sensible and balanced response to a growing problem, and it has broad support in both the public and private sectors. I am pleased that S. 1904 is being considered by this body. I urge all of my colleagues to support the Polygraph Protection Act of 1987.019060

Mr. KERRY. Mr. President, I support S. 1904, the Polygraph Protection Act of 1987. I believe that this legislation represents an appropriate balance of the interests of employees and employers, and is a reasonable and fair solution to the problems inherent in widespread polygraph testing. This bill has bipartisan support, and also has support from labor, business, and civil liberties organizations. As a member of the Labor Committee in the 99th Congress, I cosponsored similar legislation. I commend Senator KENNEDY for bringing this bill before the Senate.

I oppose the use of polygraphs in preemployment screening, which this bill would prohibit. This bill does not prohibit the use of polygraphs in postemployment investigations of economic loss, with appropriate safeguards. This is a reasonable and balanced approach. The bill contains appropriate exemptions where they are needed, and I oppose the attempts of some to carve out additional industry exemptions. This legislation does not need amendments to cater to specific special interests, beyond the carefully crafted amendments included in the bill as amended by the Senate.

S. 1904 already has the support of a number of organizations which opposed other polygraph bills, including the American Association of Railroads, the American Bankers Association, the National Association of Convenience Stores, the National Grocers' Association, the National Mass Retailers Institute, the National Restaurant Association, the National Retail Merchants Association, and the Securities Industry Association.

The use of polygraphs has tripled over the past 10 years. As industry reliance on this device grows, Congress has an obligation to decide whether the use of this tool constitutes an infringement of the rights of employees and prospective employees. I believe that polygraph use in preemployment screening, because of questions about

its reliability as well as the possibility of abuse, constitutes such an infringement.

The polygraph instrument, sometimes called a lie detector, cannot actually detect lies. It is wholly dependent on a subjective reading by a polygrapher. A 1983 OTA study by Dr. Leonard Saxe of Boston University concluded that lies were detected between 50.6 percent to 98.6 percent of the time, and that true statements were correctly classified between 12.5 percent and 94.1 percent of the time. That represents not much better than a toss of the coin in many instances. These statistics refute the use of the polygraph as a means of judging the veracity of a subject.

As a prosecutor in Massachusetts, I found the polygraph to be sometimes a useful tool in criminal investigations. I am pleased, therefore, that this legislation contains an exemption for Federal, State, and local governments as well as for contractors doing sensitive defense work. I also believe that an exemption for private employers in the areas of armored-car personnel, security alarm systems, and other security personnel is warranted as a law enforcement tool, in conjunction with other law enforcement measures.

But of the estimated 2 million people a year who are administered polygraph tests, 98 percent of them are given by private business, with 75 percent of those tests being given for preemployment screening.

The OTA study concluded that "the available research evidence does not establish the scientific validity of the polygraph test for personnel screening." Yet the increasing amount of preemployment testing means an increasing number of our citizens who are dependent on the results of this often unreliable machine. American courts cannot compel defendants to take these tests, and employers should not be able to mandate the test as a condition of employment.

I also have other concerns about the use of the polygraph as a tool of intimidation. A Florida polygrapher noted that the polygraph was "the best confession-getter since the cattle prod." Many polygraphers say that the bulk of their confessions take place just prior to the actual examination when the subject is told about the high accuracy of the machine. They believe that the specter of an infallible lie detector causes people to confess rather than be caught by the machine. This technique is unfair to prospective employees, who are not guilty of any crime, and is more reminiscent of the methods of a totalitarian country than of the United States of America.

For this reason I have opposed efforts to add an exemption to this bill for voluntary polygraph examinations. I have serious questions about how voluntary these tests would actually be in many instances, given the balance of power between employer and employee and the inherent potential for coercion in a so-called voluntary test. I have also opposed other efforts to open up loopholes in this bill by granting exemptions for specific industries. Given the unreliability of polygraph testing, particularly the 15 minute quickie tests given in many commercial and industry situations, these tests are unwarranted, unnecessary and unfair.

The State of Massachusetts long ago banned the use of the polygraph for employment purposes. In 1959, we became the first State in the country to bar its use in employment. As is well known, the economy of Massachusetts has thrived without the use of this device in industry. Merchants and industries in Massachusetts have not suffered the huge losses that some have alleged would take place with a polygraph ban. I am told that some national companies which operate in States like Massachusetts, or the 20 other States that ban or restrict polygraph use, do test prospective employees out of State on a regular basis. This bill would end this wholesale circumvention of our State laws.

This is an important and timely piece of legislation. Last year, we celebrated the 200th anniversary of our Constitution. This year, let us remember that the Constitution is a living document, and let us protect the constitutional rights of American workers. I am pleased to join with my colleagues in supporting the passage of S. 1904.

Mr. MATSUNAGA. Mr. President, I rise to urge my colleagues to pass, as amended, the Polygraph Protection Act of 1987. As reported by the Labor and Human Resources Committee the bill strikes a delicate balance between protecting the rights of employees and ensuring that employers have appropriate means to protect their businesses in cases of specific illegal incidents.

Mr. President, the polygraph test is administered over 2 million times each year. In the private sector, most polygraph tests are administered for preemployment screening purposes of random tests of employees. The test measures changes in blood pressure, respiration patterns, and perspiration. The test does not measure deception. Changes in these physiological conditions may also indicate fear, anxiety, embarrassment, or resentment rather than deception.

Mr. President, the testimony presented to the Committee on Labor and Human Resources, of which I am a member, indicates that the broad, prospective questions which are common to preemployment and random polygraph examinations are often inaccurate. The inaccuracy of polygraph examinations does not vary by industry. Although we may be particularly sympathetic to the concerns of some industries in their effort to protect themselves from unscrupulous potential employees, there is no evidence which leads us to believe that the use of polygraphs is any more effective for preemployment and random screening in these particular industries. I urge my colleagues, therefore, to avoid diluting the protections offered in this measure by adopting industry-wide exemptions to the bill.

The committee did find that a polygraph test used to investigate specific illegal incidents under strictly regulated conditions can be effective, though it is far from infallible. The bill, therefore, allows the use of a polygraph test in the course of an ongoing investigation if an employee had access to the property that is the subject of the investigation and the employer has a reasonable suspicion that the employee was involved in the incident. However, adverse action may not be taken against an employee based solely upon the results of a polygraph test; additional supporting evidence must be presented to justify such action. Furthermore, the bill requires that employees may refuse to take the examination without fear of recrimination. In addition, the bill established specific conditions under which the test may be administered and establishes minimum qualifications for polygraph examiners.

Finally, Mr. President, though many would like to leave the resolution of this issue to the States, it is clear that State regulation has not been and will not be effective. State policy on polygraph use varies widely. In fact, nine States have no laws governing the use of polygraphs. Without interstate uniformity, employers and examiners have been able to circumvent the intention of State laws, and individuals are often uncertain about the rights they may have with respect to polygraphs. It is clearly time that a uniform national policy be adopted.

Mr. President, I wish to congratulate the two principal sponsors of this legislation, the senior Senator from Massachusetts, Mr. KENNEDY and the senior Senator from Utah, Mr. HATCH. I am pleased to be an original cosponsor of this bipartisan measure to protect employees and job applicants from unjust employment actions. I strongly urge my colleagues to support S. 1904.

Mr. GRASSLEY. Mr. President, I would like to address the subject before us, namely, the use of polygraphs in the workplace.

The employment relationship is one which we, in our free market economy, value highly. Businesses, large and small, depend upon their workers to make goods and deliver services. Likewise, individuals look to employers to provide an opportunity to earn a

living. A cooperative and trusting relationship between employees and employers generally creates the best environment for good profits, as well as good wages.

In regulating the workplace, Congress should strive to foster cooperation between workers and business owners. The current proposal before the Senate on polygraphs, does not, however, advance that spirit of cooperation. Rather, the legislation is a piecemeal approach to supposed-employer abuse of polygraphs.

First, the bill exempts government employers, from State and local to Federal offices. If the polygraph is so untrustworthy, why are we allowing Government officials to continue to use it? It seems to me that we in the Government, especially we in the Congress, must begin to live by the legislation we impose on private industry.

Second, the bill attempts to create a narrow situation in which an employer may require an employee to take a polygraph. But, the exception may swallow the rule. As long as an employer has a "reasonable suspicion" that an employee was involved in an incident where the employer suffered a loss or injury, the employer can order a polygraph. The only thing the employer must do is file a report, and that report can, at a minimum, be filed in the employee's personnel file.

As a result of this exception, a host of new litigation will arise. The courts will pass upon whether the employer was justified in ordering the polygraph—whether the employer had "reasonable suspicion." And, the courts will decide whether the employer filed an appropriate report about the incident leading up to the polygraph.

Finally, the bill creates a blanket prohibition on the use of polygraphs as a preemployment screening device. Before there is any employment relationship between the applicant and the employer, we are telling the employer that he may not use the polygraph as a final check on the applicant, to confirm or corroborate the judgment about the applicant.

The vast majority of employers in this country do not use the polygraph—it is costly and its value is limited. But there are industries which may find the polygraph to be worthwhile—those involved in child care, security services, financial services or narcotics, just to mention a few. The complete ban may unnecessarily limit these employers.

Clearly, the polygraph cannot be a substitute for good management and supervision. And Americans must be protected from unwarranted invasions by employers and those who administer the polygraph. The use of polygraphs may have gotten out of hand in the last few years, and while the problem needs to be addressed, I do not believe that this bill is our best step forward. I will vote against S. 1904.

Mr. METZENBAUM. Mr. President, I am an original cosponsor and a strong supporter of the Polygraph Protection Act of 1987. I want to congratulate my chairman, Senator KENNEDY, for leading this effort to correct an unjust situation facing America's workers. He is a tireless champion for the working men and women of this country and the polygraph bill is another fine example of his commitment in this area. I also want to congratulate Senator HATCH for his leadership on this bill.

It is settled that polygraph tests are not accurate "lie detectors." The American Medical Association, testifying before the Labor Committee, stated that polygraph tests "measure nervousness and excitability, not truth." Honest workers and job applicants may well be nervous when strapped to a machine and asked a series of intimidating or personal questions. We cannot have careers and reputations depending on the results of such a frightening, unscientific test. But currently there is no Federal protection for millions of workers subjected to these tests by private employers. The Kennedy-Hatch bill corrects this critical problem.

The Polygraph Protection Act strikes a careful balance. It bans polygraph use in the two areas where the results are most suspect: preemployment screening and random testing. This will eliminate the most abusive uses of the polygraph in the private sector. The bill allows polygraph use where the employer has reasonable suspicion that a particular employee was involved in an internal theft. Under such limited circumstances, polygraph tests can serve as one tool to help reduce the serious problem of internal theft.

This bill has a broad range of support from labor, civil liberties groups and a number of business associations. I again commend Senators KENNEDY and HATCH. I enthusiastically support the Polygraph Protection Act of 1987 and I urge all my colleagues to support it.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I am prepared to yields back the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts yield back the remainder of his time.

All time has expired or been yielded back.

The question is on adoption of the committee substitute as amended.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the rollcall vote is imminent and the order was entered last evening making the call for the regular order automatic at the conclusion of 15 minutes. Therefore, I would suggest that Senators be on their way to the floor now as soon as possible.

Mr. President, I take a minute just to compliment and thank the two managers of the bill, Senator KENNEDY and Senator HATCH. They have demonstrated good teamwork on this bill, good cooperation and skill in managing the bill, handling it in committee and in bringing it to final conclusion shortly. They are to be commended.

I especially, though, commend Mr. KENNEDY. He has been in considerable physical pain during this debate, yet has not asked for any special consideration. He did not ask to end the debate last night. He, as a matter of fact, was wanting to press on all the time. And so I admire him for that extra effort that he has put forth over and above the common effort that is ordinarily needed in his position as manager of the bill.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I thank the distinguished majority leader and my colleague for his remarks.

Mr. KENNEDY. Mr. President, I ask unanimous consent that I may proceed for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I want to also thank the majority leader. We know that there is a very full calendar and there is a great deal of business for this body, and we know that there were several who had some concerns with the legislation. It is always a challenge to the leadership to try to work these matters out. I am grateful to the leader. I know I speak for all the members of our committee and, hopefully, for those who will vote in support and even those who might express some opposition.

I thank the leader very much, as well as the Senator from Utah.

The PRESIDING OFFICER. The question is on agreeing to the committee substitute, as amended.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 1212, Calendar Order No. 431, the House companion bill.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and the text of S. 1904, as amended, be substituted for the House language.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the vote ordered on final passage of the Senate bill be transferred to final passage of H.R. 1212.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER (Mr. BREAUX). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 69, nays 27, as follows:

[Rollcall Vote No. 43 Leg.]

YEAS—69

| | | |
|---|---|---|
| Adams | Boren | Bumpers |
| Baucus | Boschwitz | Burdick |
| Bentsen | Bradley | Byrd |
| Bingaman | Breaux | Chafee |
| Chiles | Hatfield | Moynihan |
| Cohen | Heflin | Nunn |
| Conrad | Heinz | Packwood |
| Cranston | Hollings | Pell |
| D'Amato | Humphrey | Proxmire |
| Danforth | Inouye | Pryor |
| Daschle | Johnston | Reid |
| DeConcini | Kasten | Riegle |
| Dixon | Kennedy | Rockefeller |
| Dodd | Kerry | Sanford |
| Domenici | Lautenberg | Sarbanes |
| Durenberger | Leahy | Sasser |
| Evans | Levin | Shelby |
| Exon | Lugar | Simpson |
| Ford | Matsunaga | Specter |
| Fowler | Melcher | Stafford |
| Glenn | Metzenbaum | Stennis |
| Harkin | Mikulski | Weicker |
| Hatch | Mitchell | Wirth |

NAYS—27

| | | |
|---|---|---|
| Armstrong | Karnes | Roth |
| Bond | Kassebaum | Rudman |
| Cochran | McCain | Stevens |
| Garn | McClure | Symms |
| Graham | McConnell | Thurmond |
| Gramm | Murkowski | Trible |
| Grassley | Nickles | Wallop |
| Hecht | Pressler | Warner |
| Helms | Quayle | Wilson |

NOT VOTING—4

| | |
|---|---|
| Biden | Gore |
| Dole | Simon |

So the bill (H.R. 1212), as amended, was passed, as follows:

H.R. 1212

*Resolved,* That the bill from the House of Representatives (H.R. 1212) entitled "An Act to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce," do pass with the following amendment:

Strike out all after the enacting clause and insert:

*SECTION 1. SHORT TITLE.*

*This Act may be cited as the "Polygraph Protection Act of 1988".*

*SEC. 2. DEFINITIONS.*

*As used in this Act:*

*(1) COMMERCE.—The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).*

*(2) EMPLOYER.—The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.*

*(3) LIE DETECTOR TEST.—The term "lie detector test" includes—*

*(A) any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual; and*

*(B) the testing phases described in paragraphs (1), (2), and (3) of section 8(c).*

*(4) POLYGRAPH.—The term "polygraph" means an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards.*

*(5) RELEVANT QUESTION.—The term "relevant question" means any lie detector test question that pertains directly to the matter under investigation with respect to which the examinee is being tested.*

*(6) SECRETARY.—The term "Secretary" means the Secretary of Labor.*

*(7) TECHNICAL QUESTION.—The term "technical question" means any control, symptomatic, or neutral question that, although not relevant, is designed to be used as a measure against which relevant responses may be measured.*

*SEC. 3. PROHIBITIONS ON LIE DETECTOR USE.*

*Except as provided in section 7, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—*

*(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;*

*(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;*

*(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—*

*(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or*

*(B) any employee or prospective employee on the basis of the results of any lie detector test; or*

*(4) to discharge, discipline, or in any manner discriminate against an employee or prospective employee because—*

*(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;*

*(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or*

*(C) of the exercise by such employee, on behalf of such employee or another person, of any right afforded by this Act.*

*SEC. 4. NOTICE OF PROTECTION.*

*The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice, in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.*

*SEC. 5. AUTHORITY OF THE SECRETARY.*

*(a) IN GENERAL.—The Secretary shall—*

*(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act;*

*(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and*

*(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.*

*(b) SUBPOENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).*

*SEC. 6. ENFORCEMENT PROVISIONS.*

*(a) CIVIL PENALTIES.—*

*(1) IN GENERAL.—Subject to paragraph (2), any employer who violates any provision of this Act may be assessed a civil penalty of not more than $10,000.*

*(2) DETERMINATION OF AMOUNT.—In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.*

(3) COLLECTION.—Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) INJUNCTIVE ACTIONS BY THE SECRETARY.—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) PRIVATE CIVIL ACTIONS.—

(1) LIABILITY.—An employer who violates this Act shall be liable to the employec or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including but not limited to employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) COURT.—An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) COSTS.—The court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

(d) WAIVER OF RIGHTS PROHIBITED.—The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement of a pending action or complaint, agreed to and signed by all the parties.

SEC. 7. EXEMPTIONS.

(a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) NATIONAL DEFENSE AND SECURITY EXEMPTION.—

(1) NATIONAL DEFENSE.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) SECURITY.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, or assigned or detailed to, the National Security Agency or the Central Intelligence Agency, (ii) any expert or consultant under contract to the National Security Agency or the Central Intelligence Agency, (iii) any employee of a contractor of the National Security Agency or the Central Intelligence Agency, or (iv) any individual applying for a position in the National Security Agency or the Central Intelligence Agency; or

(B) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the National Security Agency or the Central Intelligence Agency.

(c) EXEMPTION FOR FBI CONTRACTORS.—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) LIMITED EXEMPTION FOR ONGOING INVESTIGATIONS.—Subject to section 8, this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if—

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, including theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer—

(A) files a report of the incident or activity with the appropriate law enforcement agency;

(B) files a claim with respect to the incident or activity with the insurer of the employer, except that this subparagraph shall not apply to a self-insured employer;

(C) files a report of the incident or activity with the appropriate government regulatory agency; or

(D) executes a statement that—

(i) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees;

(ii) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer;

(iii) is provided to the employee on request;

(iv) is retained by the employer for at least 3 years; and

(v) contains at a minimum—

(I) an identification of the specific economic loss or injury to the business of the employer;

(II) a statement indicating that the employee had access to the property that is the subject of the investigation; and

(III) a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

(e) EXEMPTION FOR SECURITY SERVICES.—

(1) IN GENERAL.—Subject to paragraph (3), this Act shall not prohibit the use of a lie detector test on prospective employees of a private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 60 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power;

(ii) public water supply facilities;

(iii) shipments or storage of radioactive or other toxic waste materials; and

(iv) public transportation; or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) COMPLIANCE.—The exemption provided under paragraph (1) shall not diminish an employer's obligation to comply with—

(A) applicable State and local law; and

(B) any negotiated, collective bargaining agreement,

that limits or prohibits the use of lie detector tests on such prospective employees.

(3) APPLICATION.—The exemption provided under this subsection shall not apply if—

(A) the results of an analysis of lie detector charts are used as the basis on which a prospective employee is denied employment without additional supporting evidence; or

(B) the test is administered to a prospective employee who is not or would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

(f) NUCLEAR POWER PLANT EXEMPTION.—This Act shall not prohibit the use of a lie detector test by an employer on any employee or prospective employee of any nuclear power plant. This subsection shall not preempt or supersede any state or local law that prohibits or restricts the use of lie detector tests.

(g) Nothing in this Act shall be construed to preclude the use of a lie detector test to any expert or consultant or any employee of such expert or consultant under contract with any Federal Government department, agency, or program where a security clearance is required by the Federal Government for such expert or consultant and such expert or consultant, as a result of the contract, has access to classified and sensitive Government information.

SEC. 8. RESTRICTIONS ON USE OF EXEMPTIONS.

(a) OBLIGATION TO COMPLY WITH CERTAIN LAWS AND AGREEMENTS.—The exemptions provided under subsections (d) and (e) of section 7 shall not diminish an employer's obligation to comply with—

(1) applicable State and local law; and

(2) any negotiated collective bargaining agreement,

that limits or prohibits the use of lie detector tests on employees.

(b) TEST AS BASIS FOR ADVERSE EMPLOYMENT ACTION.—Such exemption shall not apply if an employee is discharged, dismissed, disciplined, or discriminated against in any manner on the basis of the analysis of one or more polygraph tests or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by section 7(d) may serve as additional supporting evidence.

(c) RIGHTS OF EXAMINEE.—Such exemption shall not apply unless the requirements described in section 7 and paragraphs (1), (2), and (3) are met.

(1) PRETEST PHASE.—During the pretest phase, the prospective examinee—

(A) is provided with reasonable notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is not subjected to harassing interrogation technique;

(C) is informed of the nature and characteristics of the tests and of the instruments involved;

(D) is informed—

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed;

(ii) whether any other device, including any device for recording or monitoring the conversation will be used; or

(iii) that the employer and the examinee, may with mutual knowledge, make a recording of the entire proceeding;

(E) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment;

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in section 8(b);

(iii) of the limitations imposed under this section;

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(v) of the legal rights and remedies of the employer; and

(F) is provided an opportunity to review all questions (technical or relevant) to be asked during the test and is informed of the right to terminate the test at any time; and

(G) signs a notice informing such examinee of—

(i) the limitations imposed under this section;

(ii) the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act; and

(iii) the legal rights and remedies of the employer.

(2) ACTUAL TESTING PHASE.—During the actual testing phase—

(A) the examinee is not asked any questions by the examiner concerning—

(i) religious beliefs or affiliations;

(ii) beliefs or opinions regarding racial matters;

(iii) political beliefs or affiliations;

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, or opinions regarding unions or labor organizations;

(B) the examinee is permitted to terminate the test at any time;

(C) the examiner does not ask such examinee any question (technical or relevant) during the test that was not presented in writing for review to such examinee before the test;

(D) the examiner does not ask technical questions of the examinee in a manner that is designed to degrade, or needlessly intrude on, the examinee;

(E) the examiner does not conduct a test on an examinee when there is written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the test; and

(F) the examiner does not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and does not conduct any such test for less than a 90-minute duration.

(3) POST-TEST PHASE.—Before any adverse employment action, the employer must—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test; and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(d) QUALIFICATIONS OF EXAMINER.—The exemptions provided under subsections (d) and (e) of section 7 shall not apply unless the individual who conducts the polygraph test—

(1) is at least 21 years of age;

(2) has complied with all required laws and regulations established by licensing and regulatory authorities in the State in which the test is to be conducted;

(3)(A) has successfully completed a formal training course regarding the use of polygraph tests that has been approved by the State in which the test is to be conducted or by the Secretary; and

(B) has completed a polygraph test internship of not less than 6 months duration under the direct supervision of an examiner who has met the requirements of this section;

(4) maintains a minimum of a $50,000 bond or an equivalent amount of professional liability coverage;

(5) uses an instrument that records continuously, visually, permanently, and simultaneously changes in the cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards;

(6) bases an opinion of deception indicated on evaluation of changes in physiological activity or reactivity in the cardiovascular, respiratory, and electrodermal patterns on the lie detector charts;

(7) renders any opinion or conclusion regarding the test—

(A) in writing and solely on the basis of an analysis of the polygraph charts;

(B) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test; and

(C) that does not include any recommendation concerning the employment of the examinee; and

(8) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

(e) PROMULGATION OF STANDARDS.—The Secretary shall establish standards governing individuals who, as of the date of the enactment of this Act, are qualified to conduct polygraph tests in accordance with applicable State law. Such standards shall not be satisfied merely because an individual has conducted a specific number of polygraph tests previously.

SEC. 9. DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) PERMITTED DISCLOSURES.—A polygraph examiner, polygraph trainee, or employee of a polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test;

(3) any person or governmental agency that requested the test as authorized under subsection (a), (b), or (c) of section 7; or

(4) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) DISCLOSURE BY EMPLOYER.—An employer (other than an employer covered under subsection (a), (b), or (c) of section 7) for whom a polygraph test is conducted may disclose information from the test only to a person described in subsection (b).

SEC. 10. EFFECT ON OTHER LAW AND AGREEMENTS.

This Act shall not preempt any provision of any State or local law, or any negotiated collective bargaining agreement, that is more restrictive with respect to the administration of lie detector tests than this Act.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

SEC. 11. EXEMPTION FOR PREEMPLOYMENT TESTS FOR USE OF CONTROLLED SUBSTANCES.

(a) IN GENERAL.—An employer, subject to section 7, may administer a scientifically valid test other than a lie detector test to a prospective employee to determine the extent to which the prospective employee has used a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) EXCEPTIONS.—

(1) ACCURACY AND CONFIDENTIALITY.—Paragraph (1) shall not supersede any provision of this Act or Federal or State law that prescribes standards for ensuring the accuracy of the testing process or the confidentiality of the test results.

(2) COLLECTIVE BARGAINING AGREEMENTS.—If prospective employees would be subject to a negotiated collective bargaining agreement, paragraph (1) shall apply only if testing is conducted in accordance with such agreement.

SEC. 12. MEXICO STEEL LOAN.

The Senate finds—

(1) during the past decade the United States steel industry has witnessed significant economic disruption and employment losses due to increased foreign competition;

(2) the United States steel industry has lost more than $12,000,000,000, more than half its workforce, and closed scores of plants throughout the country;

(3) in order to regain its competitive posture, the United States industry has invested more than 8 billion dollars on modernization, obtained painful wage concessions from its remaining workforce, and slashed production capacity by one-third;

(4) there are more than 200,000,000 excess tons of steel capacity worldwide, causing severe financial strains on steel industries in many countries;

(5) the proposed loan by the International Bank for Reconstruction and Development (hereafter referred to as the "World Bank") would provide Mexico's steel companies with subsidized financing to further the glut of worldwide steel production;

(6) the proposed loan could do irreparable damage to the United States steel industry, therefore, it is the sense of the Senate that the proposed loan is not in the best interests of the United States or in the best interests of Mexico's own economic revitalization; and the World Bank should reject the proposed loan.

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue such rules and regula-

*tions as may be necessary or appropriate to carry out this Act.*

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HATCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. Mr. President, I just want to say a few words about the staff who worked so hard to help us pass this legislation. Tom Rollins and Jay Harvey on Senator KENNEDY's staff and Kevin McGuiness on my own staff all did an excellent job of putting together this compromise. I also want to thank Deanna Godfrey, Jeannette Carlile and Angela Pope on my Labor Committee staff who are so critical to my efforts on the floor. All have spent hours on this legislation and other issues, and their efforts often go unacknowledged. I hope they know how much their work is appreciated.

Finally, I would like to express my gratitude to Mike Tiner, who has lived and breathed this issue for 3 years. His efforts were key to our success.

Mr. HATFIELD. Mr. President, I ask unanimous consent to be able to proceed out of order on very important remarks for my State for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## OREGON TIMBER SALE APPEALS

Mr. HATFIELD. Mr. President, I would like to take a few minutes of the Senate's time to discuss a very serious situation that has developed in my home State over the last few days.

Beginning last Wednesday, a very small segment of the environmental community in Oregon filed appeals on 36 timber sales being reoffered for sale on the Siskiyou National Forest under the provisions of the Federal Timber Contract Payment Modification Act of 1984. Then, on the first 3 days of this week, the same group filed 189 more appeals on 3 more national forests in Oregon: 80 appeals on the Siuslaw National Forest, 41 appeals on the Umpqua National Forest, and 68 appeals on the Willamette National Forest. These 225 appeals are more than were filed on all timber sales in both Oregon and Washington during the last 3 years combined.

They were filed in spite of the fact that most of these reoffered sales were modified to improve them under the most current environmental standards.

They were filed despite the knowledge that most or all of the timber sale programs of each of the national forests involved would be delayed or completely halted, which would result in serious economic disruption through unemployment and lost Federal forest and tax receipts to local governments.

These appeals were filed despite clear evidence that it is the forest products industry that is among the leaders in Oregon's effort to move out of the economic recession that has burdened the State for nearly a decade. And of no apparent concern to the fringe. And I emphasize this, did not represent the mainstream of environmental organizations. But a fringe environmental group precipitating this tidal wave of potential litigation, as many as 9,000 jobs hang in the balance.

And therein lies our dilemma, Mr. President. It is the continued unwillingness of one environmental faction to accept the lawful decisions of the Congress regarding the management of our public lands by awaiting the final forest plans, which leads us to these appeals. In their haste, and in pushing frivolous appeals by using word processors and simply inserting the name of a timber sale, these actions constitute an end-run around a consensus process crafted through compromises made by all sides.

My major concern is that this action is a polarizing affront to the consensus-building, earnest discussion-process which has been the hallmark of Oregon natural resource legislation. These appeals constitute a collapse in trust, a reckless provocation that actually could serve to harm the environmental values they purport to protect.

I am confident that the public will see this action for what it is and reject it so that there can continue to be a consensus approach to timber management and environmental protection issues.

Mr. President, the bottom line is simply this: you cannot call yourself an environmentalist and at the same time support this type of irresponsible behavior. We environmentalists recognize that the very essence of the word is responsible stewardship of the Earth's natural resources. We debate how many jobs must be maintained. We debate what must be protected at all costs and what should be subject to compromise. We debate amongst ourselves as to the proper balance of development and preservation. And though these in-house disagreements occur frequently—and sometimes quite emotionally—the debate remains within the parameters of common sense. Some of these people have crossed that threshold more times than I can count, but today they have exhausted the last ounce of reasonableness. The challenge to every person in my State who thinks of himself or herself as a true environmentalist is to let these people know that their masquerade party is over. We cannot allow them to exploit Oregon's reputation as reasonable people with a passionate love of the Earth. Let us call it like it is: these people are not environmentalists. They seek to set back the clock of environmental progress leaving behind the wreckage of people out of work and communities in collapse. Such action tears down the well-earned reputation of the Oregon environmentalist community.

Mr. President, those of my colleagues with whom I have worked on national forest issues over the years, know that I have definite views about the importance of national forest management to my State, indeed, to the entire Pacific Northwest. I have long believed that predictable multiple use forestry, implemented by using the best sustained-yield silvicultural methods available, results in vital environmental protection and contributes to economic stability in our timer-dependent communities. This is especially important considering that almost 60 percent of the forest products industry in Oregon is dependent upon public timber for its supply of raw material.

But let me remind my colleagues that the sale of public timber from our national forests did not begin until after World War II. Until that time, all of the forest products required by users in the United States and around the world came from those same private landowners who are now so reviled.

It should not be construed from these comments that I support the unsustainable harvesting of timber. My record in this body establishes clearly my strong support for sustained-yield public forestry, as well as support for research that will lead to even greater yields from an increasingly narrower land base.

Over the years I have supported these principles in the face of increasing assaults on balanced national forest management in my region by pseudo-environmentalists who do not speak for mainstream environmental concerns.

In 1969, Congress passed the National Environmental Policy Act [NEPA], which established the process by which environmental impact statements were to be prepared. Through this process, the Federal Government would be required to analyze fully the potential effects of all its actions on our natural resources. I can recall Senator Scoop Jackson offering the prediction that these EIS's would be documents about a page long by which the public could easily determine alternative options for proposed actions. Today, in fact, these EIS's frequently run more than thousands of pages in length and are even heavier than those famous continuing resolutions about which the President is so fond of railing against the Congress.

In our efforts to improve national forest management, we enacted the National Forest Management Act

[NFMA] in 1976, in response, I might add, to an environmental lawsuit. NFMA went a step beyond the 1960 Multiple Use Sustained Yield Act by setting forth specific management criteria for such resource values as wildlife, watershed, timber, and recreation in a comprehensive national forest planning process. Oregon and Washington are developing new management plans using these new guidelines. The plans are late, and there is much debate and discussion over their content, but they are proceeding ahead.

But for some, waiting is difficult. Some do not accept the process by which we manage our vast resources. And I am not referring to the Sierra Club, the Friends of the Columbia Gorge, the Wilderness Society, the Oregon Rivers Council, the National Wildlife Federation, the Audubon Society, and other groups with which I have worked—and I add that they disagree with me often and vigorously, but they are reasonable about it and never abuse the process in the manner we are now witnessing.

In fact, much of the last two decades has been spent working with these organizations to shape natural resource policy. These fruitful efforts in Oregon were embodied in the two Roadless Area Review and Evaluation studies [RARE I and RARE II], a wilderness-bill-a-year for 20 years, and various other natural resource debates.

During my years in this body I have had the pleasure of drafting and/or assisting in the passage of several pieces of resource legislation relating to Oregon. These efforts include the Oregon Dunes National Recreation Area, the Hells Canyon National Recreation Area, the Yaquina Head Recreation and Research Area, the Cascade Head National Research Area, all four of Oregon's Wild and Scenic Rivers, additions to Crater Lake National Park, the prohibition of mining in Crater Lake National Park, the buyout of mining claims in the Three Sisters Wilderness, the John Day Fossil Beds National Monument, the Columbia River Gorge National Scenic Area, the quadrupling of Oregon's Federal wilderness, and I will soon introduce a major Wild and Scenic Rivers bill for my home State.

The environmental process that has been established through this record of coalition and consensus-building is now being abused through frivolous appeals and lawsuits, and the predictable resource allocation that provides community stability for scores of timber-dependent economies is constantly jeopardized.

But in this instance, Mr. President, the interests of the majority are being subjugated to those of a fringe minority. In this instance, a system I still regard as workable and viable is being misused in a way that has nothing to do with merit or substance. Most challenges to these timber sales have failed on their merits. And having failed on the merits, the challenges are now being directed at an already overburdened agency on procedural grounds. One could quickly draw the conclusion that these appeals have been offered to delay, distract, and harass. Sincere attempts to improve forest management are one thing, but sabotage of the process is another.

I have labored for many years to ensure that the legitimate claims of concerned environmentalists are heard and acted upon. During a 1985 crisis involving the Mapleton Ranger District of the Siuslaw National Forest, Congress authorized the substitution of reoffered timber sales for new green sales which were halted because of a court injunction. The purpose of this action was to ensure a smooth flow of raw material to timber-dependent communities while still ensuring that legitimate environmental concerns about new sales on lands without EIS's were protected.

In 1986, in response to yet another challenge to timber sales—this time on the BLM's Medford District—Congress again provided for the agency to move reoffered sales forward while protecting the appeal rights of concerned environmentalists.

The theme has been consistent: the protection and balancing of competing legitimate interests in environmental disputes.

I must admit that I cannot understand the motive for this latest attack on western Oregon's timber sale program. If the Forest Service or the Congress had pushed through the irrational harvesting of public timber on lands that had not been subjected to close planning, I might understand. But this is not the case. Over half of the sales being reoffered for sale under the 1984 Timber Contract Payment Modification Act have been modified for environmental considerations. That has been done in spite of the fact that the land base remains narrower than it should be because lands released for multiple use management under the 1984 Omnibus Oregon Wilderness Act have not yet been put into appropriate production. The new forest plans, once implemented in final form, will establish the appropriate land allocations for those released lands.

Mr. President, this brief recounting of natural resource policy in Oregon over the last 20 years illustrates that cooperation and reason are the two crucial elements for the successful resolution of difficult public land conflicts. Accordingly, I encourage those interested in resource protection issues to choose this proven path which leads to fairness, equity, and wise management, and to reject those irresponsible methods which lack respect and civility for the process so many have worked so long to create.

Mr. President, I yield the floor.

---

## CONDITIONS FOR THE EXECUTION OF ARREST WARRANTS COMPELLING THE ATTENDANCE OF ABSENT SENATORS

The PRESIDING OFFICER. Under the previous order, there will now be 5 hours of debate: 4 hours will be under the control of the acting Republican leader, and 1 hour will be under the control of the majority leader.

Who yields time?

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the time sequence has been established, and we have a number of speakers, approximately 15 in total, on this side of the aisle, with allocations having been arrived at. The time is technically under the direction of the distinguished assistant Republican leader, Senator SIMPSON. I yield myself on his behalf such time as I may consume during the presentation of my comments.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ARMSTRONG. Mr. President, before the Senator begins his statement, would he yield to me for just a moment?

Mr. SPECTER. I do.

Mr. ARMSTRONG. I note with dismay there are at this moment only two Senators from the majority party on the floor, one of whom is presiding.

The purpose and intent of the next presentation is of utmost seriousness, and Democratic Senators and, for that matter, Republican Senators will miss an important procedure if they fail to attend what is being presented by the Senator from Pennsylvania, the Senator from Wyoming, and others.

We have not come here simply for a showdown. We have not come here to create a further controversy or make an existing bad situation worse.

We have come here to appeal to the good judgment, conscience, and friendship of our colleagues, but I think it is important that they attend to what is being said. It is evident, at least at this moment, that that is not the case.

I thank my friend from Pennsylvania for yielding.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. SPECTER. I do.

Mr. BYRD. Mr. President, would the Senator also point out what other Senators are on the floor?

Mr. ARMSTRONG. If the Senator would yield further.

Mr. SPECTER. I do.

Mr. ARMSTRONG. I believe I made the point, and I will make it again, that few Senators from either side of

the aisle are on the floor and, may I say to the leader, the purpose of this is to communicate with our colleagues. It is not just to fill the printed RECORD with our prose. It is to actually communicate with our colleagues.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. SPECTER. I do.

Mr. BYRD. Mr. President, I have no quarrel with what the Senator has said except for the fact he makes a point which implies the Democrats are not here, but the Republicans are.

Let the RECORD also show the majority leader is here and the acting Republican leader and the distinguished Senator from Pennsylvania [Mr. SPECTER]. That is all. I thank the Senator for yielding.

Mr. ARMSTRONG. Mr. President, the Senator from Colorado is here, too.

Mr. SPECTER. Mr. President, I send a resolution to the desk and ask that it be read by the clerk.

The PRESIDING OFFICER. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 390) to express the sense of the Senate with respect to establishing conditions for the discussion of arrest warrants compelling the attendance of absent Senators.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the resolution which has been presented specifies that it is the sense of the Senate that the standing rules of the Senate should be changed to set forth rules under which warrants of arrest would be issued.

The resolution has been submitted on behalf of the Republican leadership: Senator SIMPSON, Senator CHAFEE, Senator ARMSTRONG, Senator BOSCHWITZ, Senator COCHRAN, and in addition, on behalf of a number of other Senators: Senator QUAYLE, Senator HEINZ, Senator MCCONNELL, Senator BOND, Senator EVANS, Senator KASTEN, Senator D'AMATO, Senator WALLOP, Senator HUMPHREY, Senator WARNER, Senator GARN, Senator, GRAMM, Senator GRASSLEY, and as of this moment, as the expression goes, the list is still incomplete.

Under the arrangements which have been worked out, there has been an allocation of time, some 4 hours to this side of the aisle and 1 hour to the other side of the aisle, and in the crowded agenda some 17 Republican Senators have asked for time. Then, 1 hour is under the control of the majority leader. After he has spoken for a period of time, under arrangements worked out by Senator SIMPSON, with Senator BYRD, there will be an opportunity for rebuttal by this Senator, and some discussion.

It is the hope of this Senator that during the course of these presentations and discussion we will arrive at a meeting of the minds as to what ought to be done on this very important matter.

Mr. President, the essential issue here is the need for a rule which will establish standards for arrest warrants. At the present time there is no rule dealing with the issue of arrest warrants. The basis in the law for compelling the attendance of Senators is set out in a very abbreviated fashion without any specifications as to what circumstances would justify the issuance of warrants of arrest.

Article I, section 5 of the United States Constitution states that there may be authorization "to compel the attendance of absent Members." But nothing more is said in the Constitution about what would be required on the procedures for compelling the attendance of absent Senators.

A reference is made in Senate rule VI, paragraph 4,

Whenever upon such rollcall it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant at Arms to request, and, when necessary, to compel the attendance of absent Senators * * *

There is nothing more, Mr. President, in the rules of the Senate on what procedures ought to be employed by way of warrant of arrest. The issuance of a warrant of arrest has been occasioned only by practice and custom. There is scant, little practice or custom to establish any such procedure, with the last warrant of arrest having been served and executed to compel the attendance of an absent Senator in 1942, some 46 years prior to the issuance of the warrant of arrest served last week on Senator PACKWOOD.

It is the view of this side of the aisle that the procedures ought to be established in a reasonable and comprehensive way; that we should not focus on recriminations of the past but really should focus on the future; that our efforts here ought to seek bipartisan support. We had extended discussion last week as to the circumstances which had created the impasse leading to the issuance of the warrants of arrest. Without unduly laboring that point, it was the concern of those on this side of the aisle that the Senate was not realistically conducting any meaningful business; that it was apparent there was an absolute impasse due to the fact that some 45 Senators had taken a firm position that S. 2 would not come to a vote; that those on this side of the aisle considered the convening of the Senate in an all-night session to constitute harassment; that it was demeaning to the individual Senators and demeaning to the Senate as a whole; and, that the procedures employed were not reasonably calculated to accomplish any legitimate business of the Senate.

There was sufficiently strong feeling about this matter so that the Republicans caucused and made a conscious decision that the only way to express ourselves on this issue was to absent ourselves from the Senate Chamber. The majority leader later replied that in his view the Republicans had overstated their position because they could have prevailed without resorting to that tactic. That was, I believe, Mr. President, a candid statement by the majority leader that the position against S. 2 was going to prevail with or without Republican Senators absenting themselves and nothing that was being done by the majority leader was realistically or reasonably calculated to acheive any legitimate Senate business.

It is my hope, Mr. President, that we will move on from the events of last week to try in a very constructive way to resolve this issue to the satisfaction of all Senators. We in this body enjoy a very unique privilege to be U.S. Senators, to be, each of us, one of two representatives of each State, really ambassadors from the States which we represent, in a body which has evolved over the course of 200 years, of complex historical background, of substantial sovereignty residing in each of the original States, and Senators being in effect ambassadors from the States.

The procedures in the Senate have changed and there has been an evolution of the filibuster rule from two-thirds to an absolute number now of 60, and it may well be that there are circumstances where warrants of arrest would have to be issued. It is the view of this Senator that that should occur only under the most extraordinary circumstances, and that it is a matter of really great importance which the Senate ought to address and for which it ought to establish rules of procedure.

Whatever is specified in the Constitution in article I, section 5 that I read with the generalized language of compelling and whatever is specified in the section of the Senate rules again on the generalized language of compelling, those statements are subordinate to constitutional law in this country which has established a vast body of rules as to when compulsory process may be issued, when warrants may be issued.

Warrants may be issued as a constitutional mandate only upon probable cause, only supported by affidavit. I am not suggesting that the rigorous procedural requirements applicable to other warrants are necessarily to be applicable to warrants of arrest for Senators. But I do say whatever this body does, it does with the umbrella protection of the United States Constitution.

Some have said, perhaps jokingly, perhaps seriously, that this resolution

seems to treat Senators like criminals. And, if so, it would be better treatment than was accorded last week when Senators were not even treated as well as criminals, because if warrants are issued for suspects or for those accused of crime, for those where there is substantial evidence of criminality, there has to be compliance with rules, probable cause, and affidavits on the establishment of the legal prerequisites constitutionally to take someone or to deprive someone of his or her liberty.

Mr. President, it is not beyond adventure that such issues, if not properly resolved by this body, could eventually end up in the Federal courts, which is the final adjudicator of what citizens' rights are, and Senators still are citizens. That, I suggest, would be very unseemly. It could even be that the events of last week could involve court action on the issue of false arrest or court action on the issue of unconstitutional process and the issuance of false arrest warrants. It would be my hope that we would address these issues in a calm, detached way, really removed from the events of last week, with our sole effort being to achieve a reasonable standard, and a reasonable recall for when the Senators are taken into custody in the extraordinary circumstances where that might be necessary.

Mr. President, it is generally known, and certainly appreciated by every one of the 100 Senators, how diligently we strive to be present for the business of the Senate and to be present when rollcall votes occur. Senators come back great distances for a single vote. This Senator came back especially—4 hours of train rides on a Friday for a vote on a resolution which was passed unanimously—because of my own concern about attending the Senate business, and because of my humble concern about my voting record, which last year was 99 percent-plus.

While many Senators were assembled in the cloakroom right off of the Senate floor and stood by while two votes were recorded in the Senate Chamber, it was not an easy position for those of us who are very much concerned about our duties, and those of us who are very much concerned about our voting records, to be a foot away from the door, being able to register our presence, and to maintain those recording records to absent ourselves which is a significant indication of the seriousness with which we took that issue, and is a further indication of the underlying factors that Senators will be on this floor, will vote, and will conduct the Senate business, I think, uniformly without the need to resort to being asked or importuned, let alone arrested.

But should the circumstance ever exist where compulsory process has to be issued, it is the submission of this Senator and the submission of virtually all of those on this side of the aisle, many of whom already cosponsored this resolution and others of whom have signed up—some 17 Senators—to speak, that the rules ought to be established.

Now, Mr. President, what are the rules which we feel ought to be established before warrants of arrest are issued? Before taking up the four items, I would say that we are open to suggestions as to their modification. We do not insist that the phraseology or even the substance which we are suggesting be the exclusive approach. We are prepared to discuss the matter. It is my understanding that this resolution will be referred to the Senate Rules Committee, as well as to the ad hoc committee on quality of life. And we are prepared to discuss these proposals at that time or we are prepared to discuss these proposals at this time.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. SPECTER. I do.

Mr. BYRD. Just an observation: The resolution will be referred to the Rules Committee but will not be referred to the ad hoc committee. The Senator himself is being appointed to that committee, I am told, and he himself can bring that resolution before that ad hoc committee. That will be a proper forum for him to address that resolution.

Mr. SPECTER. I thank the majority leader.

Mr. BYRD. I thank the Senator.

Mr. SPECTER. In that event, then, this resolution will be referred to the Rules Committee by the Senate under the Senate procedures. This resolution will be referred to the ad hoc committee by Senator SPECTER. So the reference will be made, and I appreciate the standing that I will have as the point of referral.

But I prefer in this matter not to stand on any technicalities or any protocol, but to try to address the substance, to try to address the underlying issue, and to try to improve the procedures under which we operate because I think it is apparent to all that there are very strong feelings on the matter on this side of the aisle.

I have talked to a number of my colleagues on the other side of the aisle, and I think there is considerable sensitivity to the need for some resolution of the matter. I would urge that this issue be considered in the bipartisan sense, as U.S. Senators, not as Democrats or as Republicans, but with a view to improving the operation of this great body.

Mr. President, I would like now to go, albeit briefly, to the specific proposals which are encompassed in this resolution.

The No. 1 item is, "No arrest warrant shall be executed between the hours of 11 p.m. and 8 a.m. unless the pending business is of a compelling nature."

The generalized rule against middle-of-the-night warrants is well established in the practice and procedure of this country and of any civilized society. The midnight rap on the door, the midnight process, the middle-of-the-night action has long been decried as being inconsistent with appropriate if not basic decency and basic civilized procedure unless there is some extraordinary reason. This rule or proposal would allow for that extraordinary reason.

This body operates frequently around the clock when it is necessary to do so to complete important legislation such as, for example, the continuing resolution. We are on a time problem to complete the business of the Senate so that the Government will not be shut down.

We have completed around-the-clock sessions on other important legislation. I recollect a tax bill which was finished a few years ago at 6:30 a.m. On those occasions, there are virtually 100 Senators here, 93, 94, 97, and the same turnout is here as on most Senate business days. A few Senators are compelled to be absent, some for illness, some for other very important reasons. But on our all-night sessions this body is attended as well as it is during our daytime sessions when there is work to be done.

So I would quite frankly doubt that there would be any reason to issue warrants between the hours of 11 p.m. and 8 a.m., based on the record as to what Senators have done. But let the rules be broad enough so that if some extraordinary circumstance does exist, business of a compelling nature, that exception would remain operative. But it would be the exceptional case.

This body can transact its business during normal working hours; certainly, in the 15 hours which are comprehended outside of the exception from 11 p.m. until 8 a.m.

The second requirement, Mr. President, would be: "Any arrest warrant shall be signed by the Vice President, the President pro tempore, or Acting President pro tempore, or his official designee named in open session, or, if absent, in writing."

Mr. President, the rules of the Senate require that the President pro tempore or his designee, established in open session, or in writing if not in open session, shall affix his signature to resolutions and to the formalized documents which are required for the Senate. The preferable practice should be that where a warrant of arrest must be executed, it ought to be signed by ranking Senate officials.

The practice in the 1942 warrant of arrest was that it was signed by the Vice President of the United States at that time. The warrants of arrest

signed last week were signed by Senator ADAMS, who had taken the Chair in customary rotation, without the designation as required by the formal rules of the U.S. Senate.

Mr. President, the purpose in having someone like the Vice President or the President pro tempore as the officer of the Senate who signs the warrant is realistically significant, because it provides a degree of detachment. It provides a degree of seniority. It provides a degree of extra maturity which would be a countercheck for what is going on on the Senate floor by the person who moves for the warrant of arrest, which would customarily be, as it was last week, the majority leader.

There is an analogy in this kind of detachment with that of a magistrate who signs warrants of arrest for criminal process or who signs warrants for search and seizure. In many situations where those warrants are presented to magistrates, as a matter of due course it constitutes a rubber stamp where, very frequently, magistrates will act on the request of a police officer; or magistrates will act, really, in a perfunctory way; or, as cited in Sam Dash's book on wiretaps, in the 1950's some Federal judges, in issuing warrants for wiretaps, would cover the statement of probable cause because they did not want to know the secret information provided, so that they would not slip and disclose secret, confidential information.

I suggest that the formality of the detached magistrate or someone of the elevation of the Vice President or the President pro tempore has some real value and that it ought to be embodied in a formal rule of the Senate.

The third requirement set forth in the resolution is as follows: "Any arrest warrant shall include a written statement establishing the reasons for arrest."

Note that this requirement does not call for an affidavit of probable cause. It may be that some would like to see that greater level of protection where it ought to be supported by oath—the affidavit then making a statement that all the facts set forth are true and correct, subject to the penalties of perjury; and perhaps some might say that probable cause ought to be established in a more formalistic way. My own choice would not be to go to that level, although, as I say, some may disagree.

I think there is great value and great merit in having a written statement which establishes the reasons for the arrest. There is nothing like taking the time to sit down and write it out. In that process, the person who is seeking the warrant will be giving it some extra thought, will have to be putting it down on paper, will be reflecting about it for a few moments. Even the process of writing it out may lead to a change of heart or may lead to reflection or thought as to whether it really is appropriate that, under the circumstances which are then written out, there ought to be the very, very serious action taken on the issuance of a warrant.

Mr. President, in the intervening days which have passed since the warrants were issued last week, this matter had been discussed far and wide. I have discussed the matter with many people, and in a sense it was treated somewhat lightly by some last week.

I can understand the approach of my distinguished colleague, Senator PACKWOOD, in treating it with a certain air of lightness, because it certainly would have potentially adverse consequences if the people of his State or the people of this country were to think that Senator PACKWOOD had been arrested for something that was serious. After the fact and notwithstanding the intrusion into his office, notwithstanding the inconvenience, and notwithstanding being carried feet first into this Chamber, I can understand Senator PACKWOOD's treatment of the matter as he did handle it.

However, to have a warrant of arrest issued for yourself is a very serious matter; because when a warrant of arrest is issued, that authorizes the person carrying that warrant to take the individual into custody and to deprive that individual of his freedom, and to take that individual to a place where the individual does not choose to go. I suggest that it is a matter which is really very, very serious. It may be a laughing matter for those who have never been subjected to arrest and it may be a laughing matter for those for whom an arrest warrant has never been issued; but, having had only this one experience, I can speak firsthand.

I have had the responsibility, as district attorney in Philadelphia for 8 years, and an assistant district attorney for some years before that, to have to act to have warrants of arrest issued for many people. I can tell you firsthand that it is very different seeking a warrant of arrest from being the target of a warrant of arrest.

When the person who is seeking the warrant of arrest has to write down reasons, it is a sobering experience and may well lead to a change of heart. In any event, that would be a record set down in black and white which would justify the action which was taken on that occasion.

Mr. President, the fourth requirement is as follows:

> Whenever an arrest warrant is to be issued for an absent Senator, arrest warrants also shall be issued, contemporaneously, for all Senators absent without excuse, without regard to party affiliation; and the Sergeant at Arms shall make equivalent efforts to execute all such arrest warrants.

Mr. President, it is a matter of fundamental fairness that all Senators ought to be treated equally. We need not talk about equal protection of the law or have any extended discussion on basic fairness for it to be understood that it ought not be a matter of party affiliation, whether you are a Democrat or a Republican, or what position you have taken on the underlying bill.

When Senator McKellar was arrested in 1942, there is the suggestion in the RECORD that he was sought out because he had opposed certain legislation that was pending.

We are unable to really know all the facts of the issuance of the warrants of arrest last Wednesday morning, because the Sergeant at Arms—at least according to information provided to me in my conversation with the Sergeant at Arms—destroyed the warrants of arrest, including the warrants which he had served on Senator PACKWOOD and Senator WEICKER.

There is a requirement, as set forth in the rules, that there be a return of service where a warrant is served. That was not done by the Sergeant at Arms, notwithstanding the form set forth in the Senate procedure book. There is a rule of the Senate that all Senate documents have to be maintained.

That was not done by the Sergeant at Arms who inexplicably destroyed those warrants of arrest, and they really ought to be available so we could examine whether there was basic fairness and whether warrants were issued for all Democrats as well as for all Republicans.

Representations have been made that warrants were issued for Democrats, but those records ought to be available so that we would know for sure in black and white.

We have not made the inquiry and perhaps it is unnecessary to look back to last week to make an inquiry as to what efforts were made, if any, to serve Democrats as well as Republicans, but certainly that is a factor to be considered.

Mr. President, that outlines the basic reasons which this Senator sees for a sharpening of our procedures.

We have, as I say, some 17 Senators who have asked for time to speak on the pending resolution. Our acting Republican leader, Senator SIMPSON, has already spoken on this matter as part of his leadership time this morning. Senator ARMSTRONG is on the floor and I am about to yield the floor, and it will be Senator ARMSTRONG's opportunity to take the floor and to make his presentation.

I would join Senator ARMSTRONG in urging our colleagues to come to the Senate floor and participate in these discussions, perhaps to engage in debate or really hopefully to engage in

debate with questions and exchanges between the Senators.

When Senator SIMPSON worked out with the majority leader, Senator BYRD, the sequence of events I had asked for some time to reply to whatever it was that Senator BYRD would advance by way of any arguments he would choose to make, and I do have some time after a portion of Senator BYRD's presentation made during the hour which the majority leader has following our 4 hours.

I do not seek that time for any rhetorical purpose or for any forensic purpose. I seek that time so that I may have the opportunity to reply to any issues which the majority leader may raise.

But I would emphasize the desirability of frank and candid exchanges on the underlying merits, in a dispassionate way, removed as much as we can from the events of last week with Senators in good faith addressing this issue, Democrats and Republicans alike, in trying to improve our institution and trying to set decent standards.

Who knows? It is not totally inconceivable that one day there could be a Republican majority leader. Who knows? There could be a Republican majority leader who might seek warrants of arrest for absent Democratic Senators. Who knows? Protections work for everyone, and we have a greater responsibility. We have the greatest responsibility. Our responsibility runs to the people of the United States to conduct the Senate's business. And last week, as I have spoken at length and will not repeat here, the issue of comity and the issue of doing the Nation's business as our foremost responsibility and again and again, hour after hour, day after day, the two most frequently used words of the Senate are "unanimous consent." If we do not have unanimous consent and we do not have comity, we cannot conduct the business of the Senate, and there is no more important aspect of our lives than our personal freedom. That is No. 1.

From our personal freedom comes our integrity, our ability to act, and our ability to make our contributions, and that personal freedom is jeopardized when there is a process for the issuance of warrants of arrest which is not fundamentally fair, and these rules and these suggestions go to that issue.

I would hope that we could have that exchange and perhaps interrupt one another and deal with the basics and the substance and try to come to an understanding which will be agreeable to all.

I thank the majority leader for staying on the floor during the course of my presentation.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator yields the floor.

Who yields time? The Senator from Pennsylvania has consumed 37 minutes and 13 seconds.

Mr. SPECTER. Mr. President, on the applicable sheet Senator ARMSTRONG is listed for 20 minutes. So time is yielded to Senator ARMSTRONG.

The PRESIDING OFFICER. Senator ARMSTRONG is recognized for 20 minutes.

Mr. ARMSTRONG. Mr. President, I thank my colleague from Pennsylvania for yielding time for me to speak on this matter, and I congratulate him for his statement and leadership both today and last week while this matter has been seething on the floor and in the Cloakrooms and beneath the surface.

His has been a voice of thoughtful reason, as he has put it, dispassionate consideration of what I regard to be as an issue of utmost importance.

What began, Mr. President, as a debate on a proposed change in campaign law ended up last week in an episode which prompted the acting Republican leader to use the phrase "The tyranny of the majority" and accurately so in my opinion, an episode which prompted another Senator, one of the foremost authorities on the Constitution in this body, to term it "The tactics of a banana republic."

Mr. President, it is probably too soon to judge fully the consequences of what occurred here last week, but my colleagues and I, all of the Members of the Republican leadership who are in the city, that is to say all except Senator DOLE, and most of the Republican Members of the Senate, perhaps all of them before this day is over, have joined with the Senator from Pennsylvania in presenting this resolution and come to the floor, as I noted a moment ago, not to have a shootout or a showdown, not to make the existing hard feelings any more tense, but to have a frank and friendly exchange with our colleagues and to let our friends on the other side of the aisle know how seriously we take the events of the past several days.

Mr. President, last night I had dinner with one of my best friends in the Senate, a Democrat, a man on the other side of the aisle, a man who voted to have me and a number of other Senators arrested last week, a person whom I have admired and whom I still admire, whom I regard as a person of integrity and as a friend.

It was instructive to me how utterly surprised, indeed how dumbfounded he was, when I and some others around the table confided to him freely how we felt about what happened last week.

I honestly think it never quite occurred to him how it looked to be on the receiving end of a warrant for arrest, particularly when it resulted from actions which we believe not only were within our rights, but in fact were proper, appropriate, timely, and to find ourselves absolutely without any expectation on our part suddenly subject to arrest.

Well, Mr. President, we did not take it lightly.

Now, when we tried to think through what we might do to respond to this occurrence, a lot of ideas came forth. I mean frankly there were some on our side of the aisle whose instinctive reaction was they wanted to punch somebody in the nose, they wanted to create and inflame the situation that they wanted to have a showdown, they wanted to use some kind of highly inflammatory resolution to a vote.

Upon reflection, however, we decided that our interest is not to get even, our interest is not to vindicate our conduct. I do not think this situation is likely to ever arise again during the years I am in the Senate. I would be very surprised if any leader, whether a Republican leader or a Democratic leader, would ever arise again to offer a similar motion and if he or she were to do so it would surprise me greatly if the motion were to pass because I think in the light of everything, cooler heads would undoubtedly prevail so long as there are Senators in the Chamber who recall the events of last week and what has come out of it. Our greater concern is not whether it is likely to happen the rest of this year or next year or during the next several years. It is what might happen at some future date if a similar circumstance should arise.

So rather than pushing some measure to a vote, the probable outcome would be to polarize the situation completely along party lines, which would not in my opinion reflect the actual underlying feelings and beliefs of those in the Chamber, the Senator from Pennsylvania has brought forth a resolution which at his suggestion and with the concurrence of the other sponsors will be referred to the Rules Committee for the kind of thoughtful dispassionate consideration that he has called for.

Mr. President, what happened was perceived in the press and by the public as a sort of a comic-opera development. Here they are, those carefree, fun-loving Senators, playing hooky in the middle of the night, arresting each other, running around, being carried into the Chamber. To hear it on television or to read it in at least some segments of the press, it sounded more or less like college students on spring break.

Well, it was not fun-loving. It was not good humor. It was much more serious in the view, at least, of Senators on this side of the aisle, and the fact

that it was perceived in that way is due to some unique circumstances.

First, the fact that the Senator from Oregon, who is the only Senator, as far as I know, who actually was physically carried into the Chamber, was a good sport about it. That, in turn, resulted from the fact that the person who came to arrest him, who entered his office with a passkey and then physically pushed his way into the office against a barricaded door, happened to be the Sergeant at Arms, who is a friend of Senator PACKWOOD and a friend of many of us in this room and, according to our reports, conducted himself not only with dignity but with deference and courtesy and in an apologetic manner. The upshot of it was that it did not have the ominous proportion that it might otherwise have had.

That does not, in my opinion, make the matter any less serious. At the very least, relationships have been strained, and the traditional comity, traditional trust among all Senators, has been strained to the detriment of doing business in this Chamber, as the Senator from Pennsylvania has correctly pointed out.

Mr. President, I want to send to the desk in a few minutes two papers which I ask to be printed in the RECORD. First is a statement simply setting forth in detail my understanding of the events which actually occurred, just a chronology of the situation, together with a discussion of the legal issues, including citations to relevant portions of the law and cases which have been heard before various courts, so that, if anyone is interested tomorrow or next year or 25 years from now, there will be in the RECORD a thoughtful and detailed summary of how I responded to the situation.

Then, second, I want to send to the desk at the same time, along with the written statement to be published at the end of my remarks, a proposed amendment of the Senator's resolution, not that the amendment will be taken up or considered today, but it will simply accompany his resolution to the Rules Committee for the consideration of those Members.

I do ask unanimous consent to have that material printed at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. SHELBY). Without objection, it is so ordered.

(See exhibit 1.)

Mr. ARMSTRONG. Mr. President, I want to make about four or five points and I believe I can do so quickly.

First of all, I believe the all-night session to which we are referring was an illegitimate session of the Senate. It was a session of the Senate which never should have occurred, in my opinion.

Senators accord the majority leader great discretion in scheduling the business of the Senate, and properly so. Whether the majority leader happens to be a Democrat or Republican, there is a recognition on both sides of the aisle that somebody, for Heaven's sakes, has to schedule the business. Somebody has to call the shots and make the decisions. And, for the benefit of all Senators, there is a longstanding and proper deference to the right of the majority leader to schedule legislation, to decide, even though we grumble about it, within very broad limits what time we come to work and what time we quit and what bill we will take up on what day and how long we will stay and whether we switch on or off of it, whether we single track or double track. In short, somebody has to make those decisions.

But, Mr. President, it seems to me fundamental that there is a limit to that discretion. It seems to me that that discretion is not unlimited, nor is it permanent. It may be withdrawn at any time a majority, or even a minority, of the Members of the Senate conclude that the discretion is being improperly exercised, as I believe that it was last week.

I say so because I do not think the session last week was in furtherance of any legislative aim. It was not to pass S. 2, because I think there was a general—in fact, I believe, a unanimous, I could be wrong about this—but I believe that there was a unanimous understanding that S. 2 was not going to pass last week. It did not pass any time last year. It has been under debate relentlessly.

I do not want to go into the merits of it, but it is clear from the record that there are a lot of Senators in this body who think it should never pass. That is not the point. The point is it is not going to pass in its present form. It had been debated at great length and was subject to no less than seven cloture votes; more, I am advised, than any piece of legislation in the history of this Republic.

So it is clear that the session last week was not going to produce a bill that would be passed and enacted into law, nor were Senators on this side of the aisle trying to delay still another cloture vote. In fact, I was on the floor when the Senator from Oregon [Mr. PACKWOOD] offered to have still another cloture vote.

The point is this: If we were not going to pass a bill, why were we having that session? Under the circumstances, and particularly given the description and the game plan which preceded this session, I believe it was, by its very nature, intimidating and coercive and, therefore, an improper session. Under the circumstances, when the prospect of passing legislation did not seem reasonably in view, I just do not think we should have been here debating that issue. That may be a matter about which reasonable men will disagree. My view is that it was improper, intimidating, and coercive.

My second point is this: under those circumstances, and having that belief—which I think is widely shared almost unanimously on this side of the aisle and, to a surprising degree, may I say, on the Democratic side of the aisle—that we should not have been in session, I think it was proper, as a thoughtful, deliberate decision of many Members, 40-some Members, to be off the floor, to not participate, not give a quorum, not validate by our presence a session which we think was improper to begin with. We were not hiding out, as someone said. We were not playing hooky. We were not engaged in childish games.

In fact, we were following the well-established precedent in which I imagine—I cannot be certain—a precedent which I imagine has been participated in by all or virtually all of the Members of the Senate at some time or another. It is a precedent that is denying a quorum for proceedings of which you disapprove. It has been used, not frequently but on a number of occasions, in committee by Members of both parties. It is a tactic which has been used in the other body. It is not something which has been often resorted to in the Senate, but it was, in my view, a proper decision, particularly with the threat that such sessions might extend over a period of several days, session which we believe should never have been held in the first place.

Now, Mr. President, the response of voting to issue arrest warrants for Senators not in the Chamber I believe to be totally inappropriate. I believe it to be an experiment with a very dangerous idea that somehow if some Members—in this case it did not happen to be a majority of the Members—but if some Members, a near majority, wish to be in the Chamber at midnight, or 1, or 2, or 3 o'clock, that they have a right to vote to compel the attendance of other Senators. It seems to me that that is a pretty far-fetched notion, except under compelling circumstances.

Now, it is hard for me to justify that a compelling circumstance arises when a bill which has been under consideration for months and has been clotured seven times is up for still further consideration. It is not when we are on the brink of war. It is not when the economy is at the state of collapse. It is not when somebody's civil rights are being violated. It is not when there is an environmental emergency. It is just because somebody's pet bill that we have been working on for a year or more has not yet passed.

Mr. President, let me also make the point that, in addition to being an improper action, in my view the actual process by which this action was implemented also appears to be deeply

flawed. The orders, as the Senator from Pennsylvania has pointed out, are highly suspect. Some of them, I am told, claim to be warrants; others claim to be subponeas. They do not appear to be signed by anyone with the authority to arrest anybody. They are, at least, possibly a violation of the fourth amendment of the Constitution which prohibits unreasonable search and seizure.

But I do not want to dwell too much on the legal issues. We all like to have a large crowd around when we are making speeches, but the question is: Does a group of Senators, barring the most extraordinary circumstances, have the right—and I am not talking about the legal right, I am talking about the right, the good judgment, the authority in a moral sense—to compel by force the attendance of other Senators who are unwilling to participate and be present?

I think not. This is not Panama. This is not Nicaragua. This is not the Italian Parliament under Mussolini. This is the U.S. Senate. And what distinguishes us from nations like that, and from what one of my colleagues called a banana republic, is precisely our respect for law, for the kind of judgment that tempers the use of force and corrects the imperfections of individual men and women who wield power.

The bottom line is that there ought to be great restraint in the exercise of compulsory powers, restraint which was not present last week.

Mr. President, I want to note in passing that no one was seriously injured by what happened last week. No one was seriously physically injured. Senator PACKWOOD, I am told, suffered a minor injury but it could have been a lot worse in that respect. At least two Senators have confided to me—and I did not go around and take a survey, I just overheard them say it—that had they been approached by the Sergeant at Arms and if he offered force to compel their attendance they would have resisted with force. Whether they would have done it I do not know. That is what they said and I believe them. One even indicated that he would resist using a weapon. A tragic situation could well have ensued.

So I think that Senators ought to have that in mind if they should ever again be tempted to offer or vote for a motion to arrest other Senators.

Mr. SPECTER. Would the Senator yield for a question?

Mr. ARMSTRONG. Yes, of course,

Mr. SPECTER. Is the Senator aware of the circumstances under which Senator WEICKER was not taken into custody with the use of physical force?

Mr. ARMSTRONG. I am not.

Mr. SPECTER. Well, as I understand this, I have discussed this matter with Senator WEICKER, who was in his hideaway and the Sergeant at Arms came and sought to place him under arrest. I shall not repeat what Senator WEICKER is alleged to have said, but the Sergeant at Arms desisted.

From Senator WEICKER's office on the third floor—I went up with him to look at his warrant because I wanted to see what the form said—there is a winding staircase and I would say that it would have been difficult to physically take someone down that winding staircase if it were Senator HECHT, let alone Senator WEICKER.

So that when the distinguished Senator from Colorado speaks about the possibility of the use of force and the possibility of injury, the circumstances were full of that potentiality on the occasion where the effort was made to arrest Senator WEICKER and considering the physical locale.

I would suggest further it is a difficult matter for the Sergeant at Arms. I do not know of his experience in executing warrants of arrest, but I dare say it is probably not extensive. It is not easy to execute a warrant of arrest. It is a tough matter.

There was also the occasion where, as reported and as I heard it personally from the Senator involved, one Senator, seeing the Sergeant at Arms, departed with some haste—ran, to put it bluntly. There are some of us who are not in the greatest shape to run. Some of us are, and play squash and exercise regularly, but some are not. But I think when the Senator from Colorado makes the point about the potentiality for injury, for damage, he is correct.

Mr. ARMSTRONG. Mr. President, I do not want to dwell on that. My concern is the very principle of arresting Senators, particularly in the manner in which this was done, in the middle of the night on the spur of the moment with an improperly signed warrant, destroying the warrants afterward, without taking it before—and I believe the Senator from Pennsylvania has made the point—an independent magistrate as would be a warrant of another character.

Honestly, does a single Senator think that if this had been done at 10 o'clock in the morning and if someone had been required to go to the Vice President and look him right in the eye and say: Mr. Vice President, please sign these warrants, does anybody really think that any of that really would have happened? Of course not.

That brings me to my final point. I hope nothing like this will ever happen again. Neither this nor anything even remotely resembling it.

Mr. President, the Constitution says that each House shall be the judge of the elections, returns and qualifications of its Members and has very broad discretion under the Constitition to make its own rules, and this includes compelling the attendance of its Members. But I want to point out that simply because one enters the Chamber of the Senate, one does not lose his or her rights under the fourth amendment and the fifth amendment of the Constitution.

The rules of the Senate are ordinarily, and the proceedings of the Senate are ordinarily, not reviewed by courts but there are exceptions to that.

This can be readily seen if one just contemplates questions like: Could a majority of the Senate, even a two-thirds majority or even a 75-percent majority, exclude people that they did not like? Could we exclude all the Baptists from this Chamber or all the Lutherans or Republicans or all the people who did not agree on S. 2? I think not.

Less obvious but no less important is the question: Does a Senator shed his fourth amendment rights when he comes in the door of the Senate? That, you will recall, in its relevant consideration, provides the right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable causes.

It is very clear to me that this was violated last week.

Mr. President, I have had my say and I appreciate the attention of Senators who are on the floor and any of those who may be watching this proceeding on television or any who may be disposed to read about it in the RECORD.

I am not sure whether we have done the right thing. The relatively sparse attendance on the floor suggests to me that maybe this is not the right way to have handled it. Maybe we would have gotten more attention had we decided to take a more confrontational approach. Or maybe we should have called for a closed session of the Senate. Or maybe we should have had a meeting off the floor where we invite all Senators to come. We did that when the issue was the quality of life and I think we got almost 100 Members of the Senate to come and have that kind of frank exchange. We will have to see how that turns out.

But I want to close as I began, by simply saying that my colleagues and I have come here today to express our profound and heartfelt concern and to make it clear that we hope, Senators of the majority party, because they have the power, Senators of the majority party will take note of our concerns, set right what has happened, and take steps to assure that nothing like this ever happens again.

Mr. President, I thank the Chair and I thank my colleague for yielding.

EXHIBIT 1

SENATORS UNDER ARREST—STATEMENT OF MR. ARMSTRONG

Mr. President, Tuesday of last week, at about 11 p.m., the Senate voted 45-to-3 to approve the following motion of the Majority Leader: "I move that the Sergeant at Arms be instructed to arrest the absent Senators and bring them to the Chamber. . . ." [1] 134 CONGRESSIONAL RECORD S1152-53 (daily ed. Feb. 23, 1988). The motion to arrest arose in connection with consideration of S. 2, a proposal to amend campaign law.

The Senate had already had seven cloture votes on S. 2; seven times the Senate had refused to end debate on S. 2. Cloture was defeated five times in June 1987, and two times in September 1987. On February 26, 1988, it was defeated again. The eighth defeat—which came just days after the motion to arrest—surprised no one.

Let me just review briefly the events of Tuesday night, February 23: Between 4:30 p.m. and 5 p.m. there was a vote on a motion to request the attendance of absent Senators [legislative roll call vote no. 19]. Eighty-nine Senators voted; a quroum was present. The next vote was on another motion to instruct the Sergeant at Arms to request the attendance of absent Senators. That vote began at 8:30 p.m. and 74 Senators answered the roll; a quorum was present [legislative roll call vote no. 20]. At 9:50 there was another vote on a motion to request attendance [legislative roll call vote no. 21]. That motion passed 57-to-21; a quorum was present.

Just an hour before the Senate approved the motion to arrest, that was at about 10:30 p.m. Tuesday night, Senator SIMPSON suggested the absence of a quorum and the clerk began to call the roll. The Majority Leader asked unanimous consent that the order for the quorum call be rescinded but Mr. Simpson objected. The roll call continued and 13 Senators answered to their names. The Majority Leader then moved that the Sergeant at Arms be instructed to request the attendance of absent Senators. On that roll call vote, which began at about 10:45 p.m., there were 47 yeas and 1 nay; the motion was agreed to although a quorum was not present [legislative roll call vote no. 22]. The Presiding Officer then instructed the clerk to "continue the call of the roll for the absent Senators." 134 CONGRESSIONAL RECORD S1152 (daily ed. Feb. 23, 1988). I must emphasize that the motion to have the Sergeant at Arms request the attendance of the absentees was agreed to. But the Sergeant at Arms never got his chance to request anything of anybody. Immediately after the result of vote no. 22 was announced, the Majority Leader moved that the Sergeant at Arms be instructed to arrest absent Senators. That vote began at 11 p.m. and ended some 15 to 20 minutes later. As noted earlier, the motion to arrest passed 45-to-3, a quorum was not present [legislative roll call vote no. 23].

It is now necessary to emphasize certain facts about the Senate's activities of last week:

First, The Senate has already spent tens, perhaps hundreds, of hours on S. 2. The issue had been debated and debated and debated. No other bill in the entire history of the Senate has been taken to seven cloture votes. S. 2 had had seven votes in 1987 and has now had another in 1988. The S. 2 minority (which includes members of both parties) refused to end debate on S. 2, but we certainly had not refused to debate it. This fact was disappointing to certain members of the S. 2 majority, but we were fully within our rights—and doing our duty as we saw it.

Second, even on the night of the 23rd, the Republicans were ready to vote again. For example, I draw your attention to a colloquy between Senator Packwood and me that appears on page S1139 of the RECORD of February 23. Senator Packwood, who at the time was something to a Republican floor manager, said, "I would be happy to go to a cloture vote tonight. . . . " I replied, "I, for one, would have no objection to that."

Third, every Member of this body knew that no vote had shifted. No legislative purpose was being served by another cloture vote. S. 2's return was a matter of politics. The Senate is a political body; we don't shy from politics around here, in fact we thrive on it. But I did not think we would attempt to arrest people for failing to play the majority's political game.

Fourth, the Senate had taken a series of procedural votes and there was every prospect of going straight through the night with a string of essentially meaningless procedural votes. Since no votes had changed and since we were then ready to vote on cloture yet again, the prospect for an all night session punctuated by calls for the Sergeant at Arms to do something seemed to me to be harassment. Now I suppose a legislative majority is entitled to harass a legislative minority; the question is, "Can harassment include arrest?"

Fifth, the motion to arrest came at midnight. This is hardly the hour at which United States Senators should be rousted out of their beds by the Sergeant at Arms to vote taxpayer subsidies for the political campaigns of United States Senators. If the security of the country was at risk, I would say the Sergeant at Arms should be sent to roust Senators from every roost. But are midnight raids necessary for taxpayer funded Senate campaigns? I think not.

Sixth, the Sergeant at Arms was "instructed to arrest the absent Senators and bring them to the Chamber." Both the Constitution and the Senate Rule (see footnote 1) speak of "compel[ling] the attendance of absent Senators." Warrants are not mentioned. Warrants are mentioned in Senate Procedure, page 176, where a recommended motion to arrest Senators is found. But when we are speaking of serving warrants for arrest in the middle of the night we are treading on very dangerous ground.

Seventh, it is important to remember that when the Majority Leader moved to have Senators arrested that the Senate had just moments before adopted a motion to have the Sergeant at Arms request the attendance of absent Members. The Sergeant at Arms was never given that opportunity.

Eighth, nor was the Sergeant at Arms given the opportunity to compel the attendance of absent Members. As we know, the normal course of procedure is for the Sergeant at Arms to first, request the attendance of absentees, to second, compel the attendance of absentees, then finally—as a rare last resort—to arrest absentees. The middle step was omitted on February 23. It has been held that a motion to compel attendance is out of order prior to a motion to request attendance. Riddick, Senate Procedure 175 n. 20. I hope the precedents of the Senate will one day show that it is out of order to move for the arrest of Senators until a motion to request and a motion to compel have both been made.

Ninth, Rule VI of the Standing Rules of the Senate (see footnote 1) allows a majority of Senators to direct the Sergeant at Arms to "compel the attendance of the absent Senators" "when necessary," "When necessary," Mr. President. Now to be honest, the majority has wide latitude to determine the meaning of the term, "when necessary." The majority can determine that it means, "when the urgent business of the United States relating to the national security makes it imperative" or it can determine that it means, "when we are trying to give tax money to our own Senate campaigns and we are dissatisfied with seven previous votes on the same subject." The majority may have the power to define the term in both these ways, but does it have the right?

Tenth, who is to sign these warrants for arrest? Can any member of the majority party sign so long as he happens to be sitting in the presiding officer's chair when the Secretary of State puts the papers in front of him? This seems to be the current position of the majority. The President pro tempore did not sign the warrants even though he had voted on the motion to arrest and was, therefore, available to the Secretary. Nor did the President pro tempors's designee to "perform the duties of the Chair" for February 23 (Senator Proxmire) sign the warrants although he too had voted to issue them and was available to the Secretary.

Several of these points have been raised by our colleague, the Junior Senator from Pennsylvania, Mr. Specter. He is a respected lawyer and already is a foremost student of the issues that were raised last week. I wish to associate myself with his four recommendations on this subject which can be found in 134 CONGRESSIONAL RECORD S1361 (daily ed. Feb. 23, 1988).

Mr. President, there are serious constitutional concerns about the activities of last week, as well. The relevant constitutional text, what is now Article I, sec. 5 was crafted primarily on August 10, 1787. On that date, the delegates to the Philadelphia Conven-

---

[1] The Majority Leader's motion to arrest was based on Rule VI of the Standing Rules of the Senate:

"1. A quorum shall consist of a majority of the Senators duly chosen and sworn.

"2. No Senator shall absent himself from the service of the Senate without leave.

"3. If, at any time during the daily sessions of the Senate, a question shall be raised by any Senator as to the presence of a quorum, the presiding Officer shall forthwith direct the Secretary to call the roll and shall announce the result, and these proceedings shall be without debate.

"4. Whenever upon such roll call it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant at Arms to request, and, *when necessary, to compel the attendance of the absent Senators,* which order shall be determined without debate; and pending its execution, and until a quorum shall be present, no debate nor motion, except to adjourn, or to recess pursuant to a prevous order entered by unanimous consent, shall be in order." (Emphasis added.)

"Rule VI is, in turn, based on specific constitutional language:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a majority of each shall constitute a Quroum to do Business; but a smaller Number may adjourn from day to day, and *may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.*

"Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a member." U.S. Const. Art. I, sec. 5, cls. 1 & 2. (Emphasis added.)

tion took up a proposed section that read, "In each House a majority of the members shall constitute a quorum to do business; but a small number may adjourn from day to day." More than ten members spoke to the topic. (Following the debate, James Madison, a delegate from Virginia and the chief architect of the Constitution, moved to add at the end of the text the following: ". . . and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide." Madison's motion was agreed to by ten States (Pennsylvania was divided).)

Speaking to the provision, George Mason, another delegate from Virginia who is often called the Father of the Bill of Rights, said:

"This is a valuable & necessary part of the plan. In this extended Country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The Central States could always take care to be on the Spot and by meeting earlier than the distant ones, or wearying their patience, and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number: But he had also known good produced by an apprehension of it. He had known a paper emission prevented by that cause in Virginia. He thought the Constitution as now moulded was founded on sound principles, and was disposed to put into it extensive powers. At the same time he wished to guard against abuses as much as possible. If the Legislature should be able to reduce the number at all, it might reduce it as low as it pleased & the U.S. might be governed by a Juncto—A majority of the number which had been agreed on, was so few that he feared it would be made an objection agst. the plan." II Farrand, The Records of the Federal Convention of 1787 251–52 (1937 rev. ed)

Mr. President, Colonel Mason's words could have been uttered last week. He recognized that "inconveniences might spring from the secession of a small number" of Members who would deny a quorum. But he also knew of a case in his own State where the inability to obtain a quorum (or the threat of a quorum disappearing) "produced" as "good" result, namely protecting the value of their coined money.

The Constitution says, "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . . and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide." (The complete text can be found in footnote 1.) This clear language gives to each House extremely broad latitude to establish is own rules and judge its own Members. Within these broad bounds, the rules of the Houses are not reviewable by the Judiciary. This fact requires each House to observe the most solemn consideration of its rule and the rights of its Members. This solemn judgment was missing last week, in my judgment.

The Houses of Congress do not, however, have absolutely unreviewable power to determine their own rules:

"[The House of Congress may not] ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House. . . . The power to make rules is . . . a continuous power, always subject to be exercised by the House, and within the limitations suggested, absolute and beyond the challenge of any other body or tribunal." *United States* v. *Ballin*, 144 U.S. 1, 5 (1892). Cf., the leading modern case, *Powell* v. *McCormack*, 395 U.S. 486 (1969), in which the Supreme Court showed less deference to legislative rules than its earlier cases would have led one to believe.

Senators do not shed their constitutional rights at the Senate door. This can be seen readily by simply asking whether the Senate could constitutionally expel all Baptists, or Catholics, or Republicans, even if two-thirds of the Members concurred. The obvious answer is "no". Less obvious, but no less important is the question, "Does a Senator shed his Fourth Amendment or Fifth Amendment rights when he enters the Senate door?" The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Fifth Amendment provides in pertinent part, "No person shall . . . be deprived of life, lib-erty, or property, without due process of law. . . ."

Mr. President, the Legislative Branch, to quite as great an extent as the Judicial Branch, is the protector of our liberties and constitutional prerogatives. Our duty to vigilance is even greater when we consider a matter that may not be reviewable by another branch. Last week's order to arrest Senators implicates the most serious constitutional and prudential considerations, but I am afraid that we fell short of the high obligations that must guide us in such sensitive matters.

It would be a mistake to let last week's action stand as precedent. I urge us to clarify certain questions that were raised last week, and retreat from certain determinations that were made in haste and perhaps in high emotion. No rule or practice of the Senate deserves more careful scrutiny than those which permit the Sergeant at Arms to search out and arrest Senators.

I thank the Chair.

---

ADDENDUM—SENATOR SPECTER'S FOUR RECOMMENDATIONS

Senator Specter said:

"Mr. President, I have sought recognition to address the subject of the issuance of warrants of arrest on the matter which arose in the Senate after midnight on February 23 and to seek a procedure to establish rules to govern such conduct in the future. What I essentially seek are standards to bring some rationality to the practice where it may be necessary, under extraordinary circumstances, to issue warrants of arrest for U.S. Senators.

"The Constitution speaks about compelling the attendance of Senators. There is nothing in the Constitution or in the rules which talks about warrants. And there may be extraordinary circumstances where warrants of arrest would have to be issued. But I submit that we ought to establish some standards and some rules. And I propose that four rules be established and will outline a procedure where the Senate may, today, take action to correct the practices of yesterday morning.

"Those standards, I submit, should be as follows. First, no middle of the night warrants. There are rules, Mr. President, which limit nighttime activities of enforcement procedures in a wide variety of ways, including no-knock statutes. It is different to seek a warrant of arrest during business hours. There are differences in requiring a Senator to be present during business hours and perhaps as late as 10 o'clock, perhaps as late as 11 o'clock. But there should not be middle of the night warrants.

"Second, that there should be compliance with rules that warrants be signed by the Vice President or the President pro tempore or the designee of the President pro tempore, as specified by the Rules of the Senate, so that there can be an independent review of the application for a warrant very much as there is an intervening magistrate who takes a look at and authorizes any warrant of arrest or any search and seizure warrant or any warrant calling for compliance; to put that level of scrutiny and objectivity into the process.

"Third, that there be a written statement establishing the reasons for the arrest so that there will be a requirement that someone sit down in a thoughtful manner and write out why someone is being subjected to arrest.

"The current warrant form has a blank which approximates that requirement, where it states: 'Bring to the bar of the Senate blank[] given Senator,[] Bob Packwood on one, L. Weicker on another, 'who is absent without leave,' colon—'to wit' and then a blank appears. It wasn't filled in in the Weicker or Packwood warrants.

"So that there would be the thoughtfulness as to why a Senator is being brought in under a warrant of arrest.

"And, fourth, that there be equal treatment of Democrats, Republicans, or whatever party the absent Senators may belong to so that when warrants are sought, we do not have a situation, as recorded in this morning's Philadelphia Inquirer, that, 'Senator Bob Packwood, a filibuster leader ranked high on the Democrats' most wanted list was sought out to have a warrant of arrest served.'" 134 CONGRESSIONAL RECORD S1361 (daily ed. Feb. 23, 1988).

---

PROPOSED AMENDMENT

AMENDMENT TO BE PROPOSED BY MR. ARMSTRONG

At the end of the resolution, add the following new sections:

"5. No motion to instruct the Sergeant at Arms to arrest absent Senators shall be in order until the Senate shall have, first, adopted a motion directing the Sergeant at Arms to request the attendance of absent Senators and shall have, second, adopted a motion directing the Sergeant at Arms to compel the attendance of absent Senators. No motion directing the Sergeant at Arms to arrest absent Senators shall be in order until two hours shall have passed since the result of the vote on the motion to compel the attendance of absent Senators was announced. No motion to instruct the Sergeant at Arms to arrest absent Senators shall be agreed to between the hours of ten o'clock post meridian and eight o'clock ante meridian unless no Senator votes in the negative. All votes required or permitted by this paragraph shall be determined by the yeas and nays, and the names of the persons voting for and against such motion or question shall be entered on the Journal.

"6. No arrest warrant for any absent Senator shall be issued unless under the signature of the Vice President or President pro tempore and attested by the Secretary."

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am advised that Senator QUAYLE is on his way and should be here momentarily. I am further advised that Senator CHAFEE, and then Senator EVANS will be here to speak as well, and pending the arrival of Senator QUAYLE I would urge my other colleagues who have stated a concern and asked for time to come to the floor as well.

But, with the arrival of Senator QUAYLE—he does not need a chance to catch his breath—I shall yield the floor and give him an opportunity to seek recognition.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. QUAYLE. Mr. President, first let me congratulate my dear friend from Pennsylvania for all the time and effort that he has put into this resolution. He, with his great agility and capability was able to come to the floor, I am sure very tired as the rest of us were, the very next day, and to lay out some real concerns that we have, not only from the constitutional point of view, but with respect to Senate procedures, the comity that in fact should be accorded, and pointing out in the resolution that we now have before us, which is very similar to a resolution that he had introduced before, what we ought to do about the situation. It was not that he was going to just sit back and complain about what we felt was something that should not have happened, did not need to happen, and in other circumstances, hopefully, in the future, will not happen again; and him leading the Senate through this discussion and through a very positive and constructive recommendation—I certainly congratulate him.

I think, also, he will be a very good, valuable member of this quality of life ad hoc committee.

As he knows, and he has worked with me in the past, I had the responsibility—the former majority leader Howard Baker appointed me—to look at the form of the committees which dealt a lot with the quality of life. He, at that time, offered some good, positive comments. I think that he will prove to be a very valuable asset to that committee.

Though this is not being referred to it technically, that committee will be discussing this issue along with a lot of others.

So I really congratulate him for his leadership and his keen intellect into some of the legal nuances and the rules of procedure of the Senate.

Let me just say, Mr. President, before I get into some of the particulars, what, in fact, bothered me the most about this.

The thing that bothered me the most about this is that resorting to the arrest of Senators to compel their attendance by issuing arrest warrants, going out in the middle of the night and carrying one Senator back in feet first, to not pass legislation, not deal with legislation that was of the utmost importance to the Nation, but to establish a quorum to continue a filibuster that we all know was going to continue.

If this arrest warrant had been made with due consideration, if the minority, in fact, decided not to show up to vote on an issue that was of major national importance, or maybe even vote on passage of a bill or establishing a quorum before a major bill could be passed, I think on such issues, going back in history, such as the Jay Treaty which was before the first Congress at that time, because Senators were not in town they thought perhaps they ought to send out warrants and have Senators notified that they better come back and vote. They needed a quorum to establish a vote on the Jay Treaty.

I can assure you, this was not the Jay Treaty. This was not even the campaign finance bill. This was to continue a filibuster, and the minority had their leader on the floor ready to participate in the filibuster. We were able to conduct the business of the Senate. It is not the minority's responsibility to furnish the majority a quorum. That is simply not our responsibility. If the majority Members do not want to show up, that is their problem. It is not the minority's problem. That is their problem. Since they had some people that were not here and were absent, and they did not have enough to conduct a filibuster, to conduct a talkathon, they entered into arrest warrants.

I must emphasize, Mr. President, that is the most troubling aspect of this whole episode to me. That on a bill of taxpayers' subsidy of congressional elections, the majority leader felt he had to resort to arresting Senators to come back and to participate in that talkathon.

The minority's responsibility in a filibuster is this: To provide speakers to talk. The minority's responsibility is to have somebody present on the floor who is ready and willing to engage in discussion of the issue at hand. I want to point out, the minority had its leader on the floor ready to participate in discussion of this filibuster.

There is no doubt about it, we were prepared to move forward. We decided, as a matter of fact, that we were not the ones who were required to fill a quorum, and on this bill, this bill that everybody knew was not going anywhere and had been voted on seven times before, and we had the eighth vote, we resort to the arresting of Senators.

Given those circumstances on a bill that was not going to go anywhere, given the circumstances that this was a filibuster, not a vote on the bill, given the circumstances that this was late at night, we are going to have a cloture vote later on, for some reason we had to stay here all night, which is fine. We can do it the old-fashioned way, and the minority was prepared to do it the old-fashioned way. But the old-fashioned way really is not that demanding of the minority. The old-fashioned way is that the minority will furnish speakers and will be here to speak and, every once in a while, we will have a quorum call. Then if the majority leader wants to see if a majority is here, he can go ahead, call off the quorum, instruct and take a bed check, and see who is here.

We took a bed-check vote. Not enough showed up. Is that of such national emergency that you have to resort to arresting Senators? Come on.

Those are the circumstances of the event, giving that kind of flavor to where we were and what the responsibilities of the minority are, that we were prepared to go ahead with the debate on an issue that was not going to be passed by the Senate, that was not going to go anywhere, that was of little importance. As a matter of fact, I daresay, when you are back home, ask your next Rotary meeting or ask the next UAW hall meeting how many people there are for the taxpayers' picking up the tab on Senators' and Congressmen's elections. I daresay, you will not have too many of them raise their hands. This is not even a beltway issue. It is sort of an issue right within the Senate. This is one of those issues that does not get beyond the Senate, except for the little bit of publicity it gets, and people turn the page and look for something else to discuss: "What are these guys talking about now?"

We had to arrest Senators to come back and participate in a filibuster on a bill to have the taxpayers pay for our elections.

Given those circumstances, is there little wonder that many have interpreted this act as an act of harassment, intimidation, and things of that sort? Put yourself in this position, that kind of tactic, which certainly was thought out beforehand. I do not know, but I presume it was not just the spur of the moment. The majority leader is the expert on the rules. He knew what he could and could not do. He decided to resort to arresting Senators at that hour of the night.

I believe that we need to understand the flavor of the situation, we need to understand the circumstances that we are involved in, and what precipitated, I think properly so, a very important response from the minority. The mi-

nority does not have a lot, but it does have certain rights.

I would just like to quote Sir Henry Maine, and English historian on the rights of the minority:

> The substance of liberty is secreted in the intricacies of procedure. The minority can protect itself only about the firm and explicit understanding of the rules of procedure.

As Sir Henry Maine said, the concept of even liberty is wrapped up in understanding the rules of procedure. The way that I interpret the rules of procedure, not saying that he could not do it, because he did it, the question is: Should it have been done? Is this a fair procedure? Is this a procedure and a precedent that we want to continue?

The minority knows where it is, as far as the minority. But we also have to have an understanding of procedure, and that is what this resolution tries to do: to establish a fair procedure, where certainly the rights of the majority are going to be protected, because they are the majority, and a fair procedure where the rights of the minority are going to be protected.

I thought of another quote, and I cannot attribute it to an author. It has been used before, and I think it is rather appropriate for this situation in which we find ourselves.

It goes along the lines, "It is easier to rub red pepper into the poor devil's eyes than to go out and get evidence in the hot sun." It is easier to sort of take that hot pepper and rub it in the old devil's eyes than it is to go out and get the evidence in the hot sun.

It was easier perhaps to go ahead and rely on this kind of arrest warrant rather than going out and doing what you should do, find the absent Members of the majority and say, "Come in; we want to proceed." The minority was prepared to proceed, to talk. That was the minority's responsibility.

In fact, being in the minority, in the old-fashioned school of filibustering, some of us may not want to stay around every night. We might want to go home, get a few hours' sleep, and we might miss a bed-check vote. We might miss a bed-check vote, not a vote on substance, not a vote on the issue, just a bed-check vote. We might be prepared to do that. That is the old-fashioned way.

That is what, I point out, Mr. President, helps the minority to sustain the filibuster, because what is going to happen is that the majority has to show up to provide the quorum and the minority can be home getting rest to come up and participate in the debate. Let me tell you something, Mr. President. We all speak a lot, perhaps we speak too much, but it takes a lot more energy out of one to get up here and speak than to walk through those doors back there and say "present." You can do that all night, Mr. President, just say "present."

Well, if you are going to have a filibuster the old-fashioned way, you are going to do that all night. That is the old-fashioned way. That is the kind of filibuster we wanted to have. So we had it. We had the old-fashioned filibuster, and guess what? The majority did not want to show up. The minority was here ready to go. So that is the flavor, Mr. President, in which this Senator found the situation.

And now to some of the particulars of the warrant that was issued. The Senator from Pennsylvania has already, I think, pointed out that procedurally this warrant was flawed; that the Presiding Officer was not authorized in writing to sign it. It should have been the Vice President or the President pro tempore. The Senator from Pennsylvania has also pointed out that the warrants were improperly executed, blanks were not filled in, done in great haste, done in great haste, to come back and to participate in a filibuster of taxpayers' subsidies for congressional elections. That was the urgent, compelling business before this Senate that demanded Senators to be arrested in the middle of the night. The warrants were not even properly executed.

If we are going to go ahead and have this kind of draconian measure, at least we ought to do it right. That is what the Senator from Pennsylvania is saying. He is going to set up some standards and hopefully maybe a rule for when we want to arrest Senators.

I also understand that the warrants were destroyed. Some of the Senators on this side make light of the issue. I want to have it to frame, to say one night to my dear grandchildren, "I had a warrant for my arrest issued by the majority leader to come back and conduct compelling national business."

And as you have your grandson or granddaughter on your lap there and they look up and say, "Well, gee, grandpa, what was that national compelling business that you had to get arrested for to come back and do business?" You can say, "Oh, my dear, sweet child, that was to make sure that we would participate in a filibuster so that when you grow up, you can work hard and earn taxpayers' money to fund your granddaddy's election."

"Huh?" Can you hear that conversation down the road?

"Oh, grandpa."

To the grandson or granddaughter seeing that arrest warrant on the wall, showing how it was so important, you come back and say, "They did it during the Jay Treaty."

"Jay Treaty?"

"They were thinking about maybe doing it on a declaration of war."

"Declaration of war? They were important, granddaddy?"

"Yes, they were very important."

So the idea of having a filibuster to continue to subsidize Senate, and congressional elections, we equate this to war and the Jay Treaty, things for which it has been properly used.

But we understand those warrants are not here so those folks who want to put it on the wall will not be able to do it.

Now, I do not know whether they went through the Ollie North shredder or what, but they went somewhere. We cannot get our hands on them. I do not know how many speeches I have heard on this floor about shredding, about destroying documents. I do not know how many speeches I have heard condemning that kind of act. I do not think there is probably too many Senators who have not spoken to the subject.

Boy, I tell you, there has been some righteous indignation on that issue. I mean to tell you, Mr. President, I have heard emotional speeches right from the heart, sometimes from the head but right from the heart on this very fundamental issue of shredding documents. And we understand these warrants are destroyed.

Now, these warrants were, interestingly, only served on minority members. It is our understanding that somehow the majority was excluded—just arrest minority members. Now, if you are going to arrest Senators, you have to do it on a bipartisan basis. We are all Senators. If they are going to be absent and we are going to be absent, the arrest warrants ought to be on an equal basis.

I also might say when you arrest Senators, you should not pick and choose what Senators you are going to arrest. As a matter of fact, the reports are that they went to one Senator who was about to be arrested and this Senator—I think everybody knows who he is. I can use his name—the distinguished Senator from Connecticut, according to the reports, was ensconced on the couch of his office. He is a man known to have a great deal of intellect, a man who everyone knows that when he says something, he means it, and as a matter of fact probably not too afraid or bashful about carrying out what he says. And he sort of informed according to the report, the Sergeant at Arms it would not be a good idea to arrest the Senator in the middle of the night. According to reports, the Sergeant at Arms said, "OK," and left the room.

Let me tell you something. If you are going to arrest a Senator, you are not supposed to arrest him according to size. You cannot just arrest the little guys. You have to arrest the big guys. I mean the big guys ought to be arrested, too. And do not just arrest guys who are injured. I mean we believe in nondiscrimination. And I mean to tell you, I heard the big guys got

away and they went and picked on somebody who had a broken hand. I mean to tell you, what is this? What is going on, this is the U.S. Senate. I mean, boy, what a proud day. I cannot wait to tell my grandchildren about this event. This is really something I am proud of. I mean this was Keystone cops, folks. What a Senate. I sure am glad I am here, but I mean to tell you that point ought to be made.

We just talked about lie detector tests. We just passed these polygraph tests saying they are bad things. We got into this thing about all sorts of harassment and intimidation. I want you to know that when these people go out and arrest folks, they should not get intimidated, but just do their jobs and, by golly, do not pick on the people who are hurt, the little guys. Pick on the big guys, too. Give the Senate a fair round.

Mr. President, I believe that this resolution before the Senate is right on target, and again I congratulate my dear friend from Pennsylvania for bringing this to our attention.

When all is said and done, hopefully we will collect our wits about us; that if in fact you have to resort to some sort of tactic like this, it is certainly not going to be done like it was done in the past. I hope that upon proper reflection people will see that this is a serious matter and something that ought to be discussed in the Senate.

The circumstances did not call for this. I believe, in looking at the circumstances, one can conclude that, unfortunately, this was perceived by many, rightfully so, as one of harassment, one of perhaps getting back at the minority. That is not the reason for the arrest rule in the Senate.

The arrest rule in the Senate is there for a very important purpose, and that very important purpose is if there is compelling business to be done and Senators are not here, like the Jay Treaty, like a declaration of war, some nationally important legislation, and Senators are not here for whatever reason, at that time under those circumstances, and according to the procedure then an arrest warrant under the most extreme situation would be proper at that time.

Let us not get into these kinds of conduct done at sort of late at night, in a way that this was carried out. I hope this is something that is not repeated. If it is, if it is done under the same kind of mindset with the same type of results, and the same type of circumstances, we can go through this exercise again until we get it resolved.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first of all I want to congratulate the junior Senator from Indiana for that excellent speech. It was amusing but I think an important matter, and it is true that that instance the other night was a Keystone Cops event in many respects.

I rise today to address the subject of the issuance of warrants of arrest on the matter which arose after midnight on last February 23 during the debate on S. 2.

I think everybody knows I have been a supporter of S. 2. I voted eight times to invoke cloture to bring that measure to the floor. But the facts are that 60 votes are needed to invoke cloture, and the 60 votes were not there.

It seems to me it was unnecessary to have eight cloture votes to reach that conclusion. I further think we all agree that it was certainly unnecessary to issue arrest warrants. That is not to say that I do not acknowledge the sincere efforts of the majority leader to move forward with S. 2. I have great respect for his work and the work of the senior Senator from Oklahoma on the issue of campaign finance reform. But last week the Senate was in an extraordinary situation. After many hours and days of debate several Senators absented themselves from the Chamber on the reasonable and thoughful conclusion that further debate was not going to do any good.

Even as a supporter of S. 2, I understood that position, and indeed I went home myself. We voted seven times, the most in the history as I understand it of the Senate—seven cloture votes on one measure. It was evident that S. 2 was not going to be voted on. Positions had become locked in, and indeed many Senators felt it was impossible, unwise for them to change their positions one way or the other. They voted and voted and voted, and there was no need to change and indeed it was, many thought, unwise for them to change having made that many votes.

In addition, I think it is reasonable to say that it was highly unlikely that as many votes were going to be present for the eighth vote on cloture as had been present in the prior votes because there were some Senators it was quite clear who were not going to be here, either for illness or for reasons that they were on the Presidential campaign trail.

In that setting it seems to me, Mr. President, that the issuance of arrest warrants was at the very least unnecessary, and at the most clearly unwise. No arrest warrant was going to change any Senator's mind. The Senate had worked its will. The result was clear. But, Mr. President, that is water over the dam. Let us see where do we go from here.

My concern is that the practice which took place the other evening, that experience of issuing warrants, might possibly set a precedent for the future. And it would be a bad one. Are we as Senators to worry that during the middle of the night the Sergeant at Arms or his assistants are going to appear and physically bring us to the floor of the Senate to participate in a debate that we do not wish to participate in? Is there some measure going to be taking place to force Senators to debate an issue for no reason at all, and if they refuse to, then would be the issuance of warrants which I believe is demeaning to this body?

Our colleague from Pennsylvania, Senator SPECTER, has outlined the possible technical defects of the issuance of the warrants. And he in his usual way did it in a scholarly and legal manner. In fact, there is much discussion, as he pointed out, as to whether there was proper authority to issue the warrants in the first place. But the real issue is not so much technical but what is fair, what is reasonable, and what is going to happen in the future? We must assure the rights of both the majority and the minority, and see that they are respected. And that is the principle that has guided this body through its history and obviously we want all of us to see that that continues.

Unfortunately there is very little precedent to rely on with regard to the issuance of arrest warrants. That is why I support Senator Specter's resolution. He sets forth very specifically some conditions for the issuance of these arrest warrants. Hopefully we will not see that happen again for many, many years. But should it come up, should it be required in the judgment of those who are permitted to issue the warrants, as set forth in the resolution, then there is a procedure to follow. And I think that is very, very important.

What are they? Well, in his resolution he says:

"* * * the Sergeant at Arms shall comply with the following condition:

"1. No arrest warrant shall be executed between the hours of 11 o'clock p.m. and 8 o'clock a.m. * * *" No one can argue with that—"* * * unless * * *"—and there is an "unless" there—"* * * unless the pending business is of a compelling nature."

Certainly that is not too restrictive. I do not think we want these arrest warrants to be taking place in the middle of the night.

Second, "Any arrest warrant shall be signed by the Vice President, the President pro tempore, the acting President pro tempore, or his official designee named in open session, or, if absent, in writing."

It seems to me that gives some official imprimatur to these warrants. We do not want these things issuing willynilly.

Third, another extremely reasonable requirement, "Any arrest warrant shall include a written statement establishing the reasons for the arrest." Who can argue with that? Why does

this warrant have to issue? What are the reasons for it?

Fourth, "Whenever an arrest warrant is to be issued for an absent Senator, arrest warrants also shall be issued, contemporaneously, for all other Senators absent without excuse, without regard to party affiliation; and the Sergeant at Arms shall make equivalent efforts to execute all such arrest warrants."

This addresses the matter that the junior Senator from Indiana just spoke to in amusing manner, but nonetheless there is seriousness to it. We want to make sure that the physically strong, large Senators are arrested just as quickly as the smaller Senators are. We want to make sure that these arrest warrants go out regardless of party affiliation. We want to make sure that they go out to all absent Senators, not just to a selected few. We want to make sure that those warrants for all, regardless of party affiliation, are issued contemporaneously—will at the same time. I believe no one argue with those specific conditions that are set forth in the resolution.

This measure is going to be referred to the Rules Committee, and there they will have a full examination of this issue and the technical procedures for arrest warrants.

The rules as they currently stand are extremely vague. Should arrest warrants be issued in the middle of the night, and under whose authority should warrants be issued? These are all questions that can be worked out in committee on a bipartisan basis. We have a lot of learned people on that committee, people who have been around here and are familiar with the rules of this body. I hope that, in a bipartisan spirit, they will meet and go over those rules, or the absence thereof, as they pertain to arrest warrants, and come up with something. If it is not the Specter resolution, if somebody has a better idea, let us hear it.

The Specter conditions that are set forth in his resolution appear to me to make sense. There may be others. Clearly, I think we want to make certain that these warrants are not issued in the night between the hours of 11 and 8, except for compelling reasons. Certainly, we want them to have some official designation to them—who issues them. Certainly, we want to make certain that there is a statement accompanying the warrant as to why it is being issued; and, finally, that, regardless of party affiliation, they are issued to everyone who is absent, and that equivalent efforts are made by the Sergeant at Arms to arrest all.

Regardless of the unfortunate incident last week, I think we have a chance to do something constructive for the future. It may well be true that in future days, it may be necessary to have arrest warrants. The Constitution, as we know, discusses it very briefly: "may be authorized to compel the attendance of absent Members in such manner and under such penalties as each House may provide." There it is, in article I, section 5, of the Constitution. But let us codify that; and the proper approach in the Rules Committee is in a bipartisan manner.

So I urge Senators on both sides of the aisle to support the efforts of the Senator from Pennsylvania, and I hope we work together to clarify these rules for the benefit of this distinguished body in the future.

Mr. ARMSTRONG. Mr. President, I congratulate the Senator from Rhode Island on his statement. As usual, he has gone right to the heart of the matter.

His observations are particularly pertinent and timely because he comes at this from a completely different point of view about the underlying legislation, which emphasizes the fact that what we are concerned with here today is not the legislation but the integrity of the legislative process and the treatment of all Senators.

Mr. President, it appears to be that our next speaker has been delayed momentarily; and unless someone seeks recognition, I will suggest the absence of a quorum, while I determine who is to speak next.

Mr. BYRD. Mr. President, on whose time?

The PRESIDING OFFICER. From the time allotted to the Republican leader.

Mr. ARMSTRONG. With that understanding.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kentucky is recognized.

Mr. McCONNELL. Mr. President, we have before us today a very important measure that addresses the question of how we relate to each other and how we function under the rules of the Senate.

For the last few weeks, we were engaged in a debate on a very contentious issue, an issue that divided us, almost without exception, right down the middle of the aisle in the Senate. It is an issue upon which Republicans felt strongly one way and Democrats felt strongly another. I have no desire to rehash that. We addressed that issue eight times in the last 10 months. The result has been the same each time. It is clear that that measure is not going to pass the U.S. Senate. I guess the question is, where do we go from here in terms of the way we function in stressful situations?

The Specter resolution, in my judgment, is not designed to embarrass anyone but to deal with an issue that developed in the course of that contentious debate, which raises serious questions about how we function and how we relate to each other in this body. The Specter resolution, as has been indicated by a number of speakers, suggests four provisions which I think are worthy of consideration and adoption by the Senate. It is a sense-of-the-Senate resolution with respect to the conditions which would be appropriate for the execution of arrest warrants compelling the attendance of absent Senators.

The first provision is:

> No arrest warrant shall be executed between the hours of eleven o'clock p.m. and eight o'clock a.m., unless the pending business is of a compelling nature.

The second provision of the Specter amendment is:

> Any arrest warrant shall be signed by the Vice President, the President pro tempore, the Acting President pro tempore, or his official designee named in open session, or, if absent, in writing.

The third provision is:

> Any arrest warrant shall include a written statement establishing the reasons for arrest.

And fourth:

> Whenever an arrest warrant is to be issued for an absent Senator, arrest warrants also shall be issued, contemporaneously, for all other Senators absent without excuse, without regard to party affiliation; and the Sergeant at Arms shall make equivalent efforts to execute all such arrest warrants.

Now, with regard to the matter last week, I think it would be fairly safe to say that the security of the Nation was not at stake. It was not an issue that involved the Government directly in any sense. It was not an issue of overriding concern out in the land, and it had been voted on seven times. Clearly, it seems to me, that would not have been a situation where the issuance of an arrest warrant might have been appropriate under the Specter amendment.

Clearly, Mr. President, what the Specter proposal seeks to do is to establish some parameters, some guidelines for the issuance of arrest warrants when we are trying to do the Senate's business, and those parameters, it seems to me, add up to fundamental fairness and approaching the issue in as bipartisan a manner as possible.

I know that this amendment will be referred to the Rules Committee for consideration. I hope that after due consideration we will be able to report to the floor of the Senate a bipartisan proposal that deals with the situation in which we unfortunately found ourselves last week.

Mr. President, I think that the Senator from Pennsylvania has done an

19-059 O-89-2 (Pt. 3)

outstanding job of coming up with a recommended solution to that dilemma. I think we ought to give his proposal serious consideration and at some time during the course of this year pass a bipartisan provision dealing with this situation in which we found ourselves.

Mr. President, I am not going to belabor the issue further. We have had a number of speakers already on the issue. Senator SPECTER has spoken at great length.

I commend him for his most important contribution to the way in which the Senate functions. His suggestions, it seems to me, are extremely constructive, and I hope they will be accepted in that spirit.

Mr. President, I suggest the absence of a quorum.

Mr. CHAFEE. On the Republican time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I rise to speak a bit about campaign reform, about some of the events of last week and about some of the election procedures in my home State which may be related.

Let me say, first of all, that I think as a result of all the controversy surrounding S. 2, it has caused us all to think about campaign limitations, about campaign reform, if we can use that term—of course every bill that passes here in the Senate is called a reform bill—and it causes us to think a bit about the long-term functions of this institution, the Senate of the United States.

Wherever I go people say to me, "Well, you are 1 of 100, the most exclusive club in the world," et cetera, et cetera, and, indeed, I do feel that way. It is a great privilege to serve in it. But, also, and I suppose because of our rules necessarily so, there are 100 strong-willed people in this body representing different parts of a great country. There are going to be times of strife and conflict.

Let me say that I personally strongly disagree with this business of arresting Senators. I am not criticizing any individuals personally, but it seems to me that in 1988 and in the period that we are in in our history it makes us look very bad.

I know there are all sorts of legal niceties on both sides of it and there are moments when the leadership perhaps is frustrated and must go to extreme steps, but it just struck me that this is something that is very inappropriate.

I think we have to carry on here with a sense of decorum, a sense of respect for one another and a sense of respect for one another's ideas.

On the particular evening in question last week I was not here, Mr. President. I was in my home State of South Dakota. In fact had the marshals come for me, they would have had to experience a 40-degree below zero chill factor. So perhaps they decided against arresting me.

But in any event, we had our Presidential primary on that day. And it was a primary in which everybody can vote. We had a good turnout, a very high turnout, and are very proud of the response on both the Democratic side and the Republican side.

Mr. GEPHARDT won on the Democratic side and Mr. DOLE on the Republican side. But the citizens of our State had a very good feeling.

Mr. President, I ask unanimous consent to print in the RECORD some brief materials in reference to the South Dakota primary.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[1988 Republican National Convention Delegate Selection Process South Dakota]

CERTIFICATION OF DELEGATE AND ALTERNATE SLATES

I, Dwight L. Adams as South Dakota Executive Director of the Dole for President Committee, do hereby certify that the delegates and alternates for candidate Bob Dole listed below were arrived at in accordance with South Dakota state law and the bylaws of the South Dakota Republican State Central Committee.

DELEGATES

*Name, address, and city*

(State Chairman) Larry Pressler, Humboldt.
George S. Mickelson, State Capitol Bldg., Brookings Pierre.
Karen Dvorak, 605 South Williams, Sioux Falls.
Don Peterson, 406 James Place, Yankton.
Chester A. Groseclose, Jr., PO Box 1030, Aberdeen.
Jack G. Rentschler, 5303 North Cliff, Sioux Falls.
Thomas C. Adam, 215 W. Broadway, Pierre.
Carole Hillard, 2809 Frontier Dr., Rapid City.
Howard Owens, 1255 Country Club Dr., Spearfish.
Robert L. Cullum, 48 Montgomery St., Custer.
Bonnie Roesch, HCR 2, Box 46A, Rescoe.
James Simpson, 3102 Meadowbrook Dr., Rapid City.
Sharon J. Haar, 613 East First, Wagner.
Gene Warkenthien, Star Rt., Box 9, Willow Lake.
Gordon Mydland, RR 2, Lake Preston.
Doris Kumm, 521 6th St. SE, Watertown.
Glenn Roth, Box C, Olivet.
Lyla R. Hirsch, RR 1, Box 520, Yankton.

ALTERNATES

*Name, address and city*

Vance Goldammer, 2432 South Main, Sioux Falls.
W.E. Dorsey, 1509 South Main, Redfield.
Bruce Dahl, 3710 Holly Ct., Rapid City.
Veldon Blair, RR 3, Box 23B, Vale.
David Bogue, RR 3, Box 40, Beresford.
George M. Nohava, Rt. 1, Box 41, Tyndall.
Michael P. Ortner, 505 South 6th, Hot Springs.
Perry Hier, 1514 S. Lloyd, Aberdeen.
Barbara Terca, Box 446, Presho.
Jack Meyer, Jr., 536 Ashmont Rd., Madison.
J. Shanard Burke, 503 N. Grand, Pierre.
Milton Lakness, Rt. 1, Box 36A, Hazel.
Richard (Dick) Peterson, 1703 Victory St., Brookings.
Thomas R. Hills, 620 Harvard, Spearfish.
John C. Fischer, Box 607, Long Lake.
Doreen Kayl, Box 447, Clear Lake.
Paul Guiser, PO Box 517, Martin.
Dennis E. Hultgren, RR 2, Box 147, Akron.

Mr. PRESSLER. Mr. President, I say this because it was a contrast or a shock or whatever to me to fly from South Dakota, where we had the primary, with the citizen participation, good will, some candidates won, some lost, but when I arrived here, I called my secretary and she told me of the events of the evening before, and it was like going from out among people who really believe in our system and who believe in it so strongly, to come back to the Capitol where things had occurred that, in my judgment, should not have occurred.

Mr. President, on the issue of S. 2, the whole business that we were in this fight over, let me say that I believe strongly in campaign reform. I believe in limiting spending. I think we have to do something about the power of special interests here in Washington.

I have practiced limited campaign spending in my own campaigns. In fact, I have always made it a point that I run low-budget campaigns and people have responded to that. In fact, in the last election, there were several elections where the person spent less but made a point of it and actually won the election. So there are choices that the public can make. There are choices that candidates can make.

This Senator would not mind if we eliminated political action committees, although I do not think anything is wrong with them particularly. In terms of their basic nature, when they were formulated they were a reform in and of themselves. In fact, when I first came to the House of Representatives in 1974, I was told the political action committees were a reform and I believe originally supported by Common Cause. I could stand corrected on that.

But I think that the idea was that after the Nixon era and Watergate and all that, people did not know where the money was coming from. There might be 20 checks from individuals from General Motors but people would not know that they were bundling or that they were all from General Motors or from a labor union or something. So they formed political

action committees so you would know the source of the money and that was the big reform. Everybody was talking about it, how that was going to clean up politics, and so forth.

I really do not agree that this body is for sale. I know most of the Senators personally here and they work under great pressures and great strains. They work hard at fundraising and they work hard at a lot of things.

But I still believe that our political system produces some very high quality people who are very dedicated to the United States of America. So I am not one of those who says that everything here is corrupt. We have a lot of problems, granted. But before we pass a bill without looking into it, let us think a little bit about where we are and where we want to go.

Now, this legislation that was proposed, in my judgment, would have opened the door to public financing. I do not care how you slice it. Under the first S. 2 we voted on a year ago, I would have received $1 million in cash when I run for reelection in 1990. Now, granted that has been changed. Now we have a postal subsidy and we have a provision that if one side spends more than public financing will come in.

But it is amazing how quickly we forget things around here. In the Watergate Committee, Sam Ervin's committee, one of the principal recommendations was never to have public financing of congressional or Senate campaigns. The reason was that you have a Federal Election Commission deciding who the candidates are.

Let us just think about that for a minute. Let us say we have public financing of campaigns. There certainly is going to be a proabortion and antiabortion candidate running in my State for the Senate. There is going to be all sorts of different political parties taking advantage of the free Federal funds. There is going to have to be a huge agency down here in Washington, DC deciding who gets the money, who is a legitimate candidate, which is a legitimate party. Sam Ervin and his committee unanimously adopted a resolution that it was dangerous to have taxpayer financing of campaigns because you have Federal bureaucrats deciding who the candidates are.

Now, let us say that we have this new form of S. 2 where there is a triggering mechanism and public financing comes only when one side exceeds. Who is going to decide if one side exceeds? It is going to be some bureaucrats in Washington, DC. The Federal Election Commission is going to have to be made as big as the State Department or the Department of Commerce to deal with all these things quickly.

So, let us say that 2 weeks before the election I exceed my limits. Who is going to determine that? You really cannot determine that without an audit that takes months to carry out.

The fact of the matter is, there is going to be Federal money pouring into every campaign. Let us say it is a primary. Let us say there are 20 candidates running for the U.S. Senate in Florida, which there now are; probably more than that. Are all of their campaigns going to be paid for by the taxpayers? Who is going to decide? Who sits down and decides?

That is why the Sam Ervin committee warned, because they were concerned about the IRS going after private citizens during the Nixon administration, allegedly. They said the Federal Government would have far more power over American politics if you have public financing of Senate and House races because they would be deciding who the candidates are.

Think of the power in the last 2 weeks of a Senate race in California if a group of unknown bureaucrats here in Washington, DC, decide who qualified for $12 million of taxpayers' money. Think of that power. That is really something.

So, the point I am making is that in my brief time in Washington, since 1974, when I came here and the big reform was the Ervin committee recommendations, the Watergate Committee recommendations, the principal recommendation was: Do not get involved in taxpayer money in Senate or House races. I do not hear anybody talk about that. I have not read any editorials about it. It has been forgotten.

Why do we have these reform committees? Let us read their recommendations and learn something from them.

Now, some people say, "Well, this taxpayer financing has worked pretty good in the Presidential campaigns." Now, wait a minute. Has it really? Let us think about that for a minute. Has it limited spending in the Presidential campaigns? No. In fact, the spending ceilings have been raised and increased and, in fact, there are ways around the ceilings.

For example, one Presidential candidate slept in Sioux Falls many nights to avoid getting up to the Iowa ceiling. Another would always land his plane in South Dakota, have a meeting there, and go over into Iowa and campaign. It is a fraud and it is just being added to the Federal deficit.

There are fringe candidates who receive $12 million to $14 million. As I understand it, Mr. Lyndon LaRouche, a candidate of some party, has received over the years literally millions of dollars of taxpayers' money which has been added to the Federal deficit. And he is legally qualified, from everything I have read in the papers. And there have been many others that you have not heard of who have found ways to qualify.

So, is it really reform? In the Presidential elections, what about PAC money? There is still PAC money in Presidential campaigns. In fact, there is more PAC money in Presidential campaigns than there ever was before. It has just been added on.

There is individual contributions, there is bundling, all the same things are there, just the ceilings have gone up. And the Federal dollars are being added to the national debt, because when you check off your dollar, you are not paying a dollar's more taxes. That means the Federal Treasury is putting a dollar toward the Presidential campaigns. That dollar has to be made up by other taxpayers or added to the national debt.

So this good government thing has not resulted in any reform. The PAC's are still there. All the problems are there. The ceilings have gone up. There is more money being spent and we walk around and say that is reform.

Now, let us think about all these bills called reform. There is the tax reform bill that was passed here which I do not think had any reform in it. Some of my colleagues would disagree with that.

Mr. President, I think before we start down this path, let us take a look at the constitutional amendment to limit spending in these races. That would be fine. You do not need public money. You could have limitations. There are contributions available. Make limitations. Eliminate PAC's. Let us pass a constitutional amendment. We can do it in 9 months. We would have it for the elections in 1990. Let us apply it to the House as well as the Senate.

So all those things come to my mind. But that is what this body was debating about and there was a lot of self-righteousness on both sides, I suppose.

But this was topped off by arrest warrants being issued and one Senator, at least, being arrested and supposedly carried onto the Chamber floor. I think that is a very sad thing in this age, that we cannot have a debate and we cannot disagree among ourselves without it reaching that point. I think it was the low point of the Senate since I have been a Member of the Senate, and this is now my 10th year.

I think it adds to the public perception that inside the beltway we are unable to do our job. We cannot deal with deficits. We cannot seem to deal with moving legislation.

It has deepened feelings. I would predict that we probably will not be able to pass a campaign reform bill limiting spending now because such hard feelings have arisen over this matter.

So, Mr. President, it is with a sense of sadness that I speak today. I did not

intend to speak on this. It is with a sense of hope that the United States Senate will overcome this.

Let me say that during my time in the Senate I have not engaged in some of the stalling tactics or I have not engaged in—I hope I have not engaged in—confrontations with my colleagues that were unnecessary, but I have tried to be a cooperative Member of this body with both sides. I have served under a variety of leaders on both sides. I respect them all and I like them.

But, how we got ourselves into this situation I do not know, but I do know that, somehow, this Senate must rise above it, put it behind us, take some steps to make sure it does not happen again, because it diminishes every one of us when something like that happens.

Mr. President I ask unanimous consent that two articles from the Rapid City Journal be printed at this point in the RECORD and I yield the floor.

There being no objection, the articles were order to be printed in the RECORD, as follows:

DOLE, GEPHARDT RUNAWAY FAVORITES IN STATE

GEPHARDT MARGIN SURPRISE

(By Chet Byokaw)

SIOUX FALLS. Rep. Richard Gephardt turned back Massachusetts Gov. Michael Dukakis in the South Dakota Democratic presidential primary Tuesday night, as the Missouri congressman won support from fellow Midwesterners.

"Dick's message appealed to the workers, the farmers and the senior citizens," Gephardt's wife, Jane, said at a campaign rally in Sioux Falls. She said she had not expected her husband to win by such a large margin.

Aides from the Gepahardt and Dukakis campaigns had predicted the contest would be close, but Gephardt won convincingly to rebound from his loss to Dukakis in last week's New Hampshire primary.

With 99 percent of the precincts reporting, Gephardt had 44 percent of the vote, and Dukakis had 11 percent. Sen. Albert Gore Jr. of Tennessee was third with 9 percent, and Illinois Sen. Paul Simon was fourth with 6 percent. Gary Hart and Jesse Jackson each had 5 percent of the vote.

Gephardt's state campaign manager, Julie Gibson, said the Missouri congressman won South Dakota because he drew heavy support from farmers. A win in South Dakota should help Gephardt as he campaigns in the 20 Super Tuesday states that hold primaries and caucuses on March 8, she said.

But Dukakis' state director, Fritz Wieking, said the campaign was pleased with the South Dakota results and expected to win the Southern primaries next month.

"We did real well in South Dakota," Wieking said, "If you asked people six months ago if a Massachusetts liberal would come in second in South Dakota, they would have said no."

"We are confident that we will mop up Dick Gephardt in the South," Wieking said.

Television ads run by Gephardt late in the campaign hurt Dukakis, Wieking said. The ads criticized Dukakis for his stands on farm, tax and trade issues.

"We knew that the negative ads were having a disastrous impact," Wieking said.

He also said the Dukakis campaign expected to split the South Dakota delegates with Gephardt because other candidates wouldn't get enough votes to meet the threshold for receiving delegates.

George Cunningham, the state chairman of Simon's campaign, said the Illinois senator's effort in South Dakota "was too little, too late."

"I had hoped we would come in a strong third," he said, adding that he understood Simon was finishing fourth. "If so, that's a disappointing finish."

Simon's national campaign had promised a $300,000 budget for South Dakota, but as of Feb. 8, only $11,000 had been received, Cunningham said.

The Simon campaign pumped more money and staff into South Dakota after the New Hampshire primary, but that effort came too late, Cunningham said.

"You cannot come into South Dakota a week before the primary and mount a campaign," he said.

The vote in the Democratic primary was legally non-binding because the South Dakota primary occurred before the national party's rules allow, but a compromise was worked out so the results would still help determine the allocation of delegates to candidates.

South Dakota Democratic Party officials said that while the primary wouldn't directly award delegates, a March 12 statewide caucus would apportion delegates according to the primary results.

Only a small number of delegates were at stake in the primary, which was to help determine 10 of the 19 delegates South Dakotans would send to the Democratic National Convention this summer.

But candidates spent a lot of time visiting the state and a lot of money advertising on television as they hoped to gain a boost or at least avoid a setback before heading into March 8, when 20 states will choose delegates in Super Tuesday primaries and caucuses.

Gephardt stressed his plans for increasing farm income by limiting the production of grain and forcing other nations to accept the import of U.S. grain. He ran a television ad criticizing Dukakis for not supporting those programs, but the Dukakis campaign said the ad misrepresented the Massachusetts governor's stand.

Dukakis focused on his economic plans, which he said would help revitalize the economy in South Dakota and other rural states, while Simon stressed his theme of compassion for farmers, workers and other members of the traditional Democratic coalition.

The balloting Tuesday offered South Dakota Democrats the first chance to vote in a primary since the Legislature moved the presidential portion of the primary from June to February.

---

DOLE CREDITS HARD WORK

(By Dennis Gale and Bob Irnrie)

SIOUX FALLS.—U.S. Sen. Bob Dole of Kansas easily won South Dakota's Republican presidential primary Tuesday, notching another victory in the Midwest and gaining momentum in his battle with Vice President George Bush.

With 99 percent of South Dakota's 1,151 precincts reporting News Election Service said Dole had 56 percent of the vote compared to 20 percent for Pat Robertson and 19 percent for Vice President George Bush. Rep. Jack Kemp trailed with 5 percent.

"I took South Dakota very seriously. I worked hard in South Dakota," Dole told a cheering crowd at a Sioux Falls motel.

"It's a lot more fun winning."

Dole had the backing of Gov. George Mickelson and U.S. Sen. Larry Pressler of South Dakota during the campaign. Both officials were with Dole as he celebrated victory at a GOP rally.

Dole said the nation was focusing on the South Dakota results, and Wednesday's papers would say "Dole wins South Dakota."

"Much of my victory is because . . . I'm an issues person," Dole said. "In my view, that made a difference."

"Bob Dole understands agriculture. Bob Dole understands Rural America."

Bush surprised supporters last week when he canceled television ads that had been slated for South Dakota. Campaign aides said Bush was withdrawing to concentrate on the 20-state Super Tuesday races March 8. He had visited South Dakota at least nine times since July 1986.

Bush was backed by two-term former Gov. Bill Janklow and by current Lt. Gov. Walter Dale Miller.

Bush made a mistake by pulling out of South Dakota in the last days before the primary to concentrate on the Super Tuesday races, Dole said.

The Kansas senator said he expected Bush to downplay his big loss in South Dakota.

"I hope America's farmers are listening. I don't think they're going to want to be abandoned by candidates."

Dole has said the vice president was turning his back on the Midwest. A key Bush aide in South Dakota has said she was angry when she learned of the decision to withdraw from the state.

"Bob Dole has demonstrated that if people listen to the issues and look at my record, they understand I can make a difference as president," Dole said.

Robertson's strong showing in South Dakota Tuesday also demonstrated that the Baptist minister can do well in primary states, Dole said.

"I imagine a lot of people will be light sleepers in the South tonight, like the Bush people," Dole said.

But Bush backers in South Dakota wasted little time in trying to remove the shine from Dole's victory.

Janklow, co-chairman of Bush's state campaign, said the vice president was "better off staying out."

Bush was behind Dole anyway, Janklow said, and Bush risked damaging his national "perceptions" by staying in the race.

"(Dole's win) will be a half-day story and that's all there is to it," Janklow said.

The new early primary election capped a campaign that lured the candidates to the state as early as July 1986 and featured more than two dozen combined visits.

Eighteen delegates were at stake in the election. The Republican Party set a threshold of 20 percent, meaning any candidate getting less than 20 percent of the popular vote gets no delegates in South Dakota.

Dole said he would do well in South Dakota. Bush forces cited Dole's standing in the state in the decision to spend campaign money elsewhere.

Robertson raised GOP eyebrows when he finished ahead of Bush and behind Dole in the Iowa caucuses. He followed that up with a campaign trip to Watertown Feb. 10 but

did not reappear in South Dakota after that.

Kemp's last South Dakota visit was in December, but he made at least six other trips to the state last year.

All four of the active candidates spent money on television commercials. Dole appeared to put the most resources into campaign ads, while Kemp concentrated on large wooden signs erected in many towns in the state.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, the Senate has been called the greatest debating society in the world. It certainly is the crucible of our democracy in regard to the attempts to resolve long-term problems that face our society. I am a member of the Rules Committee, to which this proposal will be referred, so I do not intend to talk about the proposal itself. I would attempt to try to calm the waters a little bit, if that is possible.

It may not be possible for a while, Mr. President, because, as I have learned from my good friend from West Virginia, there is nothing so instructive as the history of the Senate. So we went back to the RECORD.

It was in 1942 that arrest warrants were issued the last time by the Senate. It involved not a partisan debate, but an intraparty dispute over keeping a quorum by the majority at the time of the consideration of a bill dealing with poll tax.

The problem occurred when Senator Barkley was the majority leader and he asked that a quorum be procured to proceed with the bill that was before them, November 14, 1942.

I mention this history because it is interesting to look it over. It is interesting because the event took place on the 14th and the discussion continued, as this has, on November 16, on November 17, and on through the period following. There was acute disagreement, as a matter of fact, between Senator McKellar and Senator Barkley.

One person who was writing concerning the Capitol at that time, his name was Richard Langham Riedel, wrote "The Halls of the Mighty, My 47 Years in the Senate." In that, on page 89, he talks about Mark Trice, and his role in this. He says:

"A greater challenge for Mark Trice came late one evening in 1943—" that was an error. It was 1942.

When Majority Leader Alben Barkley was determined to get a quorum, come what may. "Do you mean Senator McKellar, too?" asked Mark. "I mean *everyone!*" answered Barkley. With more than a few misgivings, Mark set out for the Mayflower Hotel to seek the volatile bachelor from Tennessee. When Senator McKellar did not answer the house telephone, Mark enlisted the aid of a hotel official who suggested that they get a maid to knock on the door. Obviously the hotel man knew McKellar well! The Senator opened the door at the maid's request to discover Mark Trice outside. McKellar welcomed him and seemed surprised to learn that he was needed at the Senate. Though Mark carried a subpoena in his pocket, it never became necessary to mention it.

The old Senator came along in a friendly spirit, chatting with Mark as though they were on a normal trip together. Then suddenly, as the car climbed Capitol Hill, the light in the dome made McKellar put two and two together. He realized that he was about to help the leadership get a quorum that would foil his fellow Southerners. He stopped talking to Mark. His face grew redder and redder. By the time the car reached the Senate entrance, McKellar shot out and barrelled through the corridors to find the source of his summons to the Capitol in the middle of the night. He was so angry with Barkley that he would not speak to him for months, though as senior Democrat, Senator McKellar sat beside the Majority Leader in the front now. Then came the day when Barkley dramatically resigned the leadership in protest against President Roosevelt's tax bill veto.

It goes on to say that the two became friends again after that. I mention that because the interesting thing about history is how history can warp the record. The RECORD shows, on November 14, that Senator McKellar answered the roll and a quorum was present upon his appearance at 3:42 in the afternoon. I wonder if history is going to warp this occasion.

McKellar was not brought out of a hotel at midnight, in the middle of the night at all. He was asked to come down, he came down, they did not even serve their warrant on him, as a matter of fact, the subpoena.

My point is that I hope we can try to see, now, this whole collision in perspective. Since we represent two great opposing parties on an issue of great philosophical difference now, in terms of Federal financing and limitation of expenditures, we can expect a collision. We did have a collision.

There were people on our side who felt that if we were to continue debate on that, the majority had the responsibility to produce a quorum, if one was demanded, or else to go out of session and to await the cloture vote that was scheduled for the next day. Or, as I understand it, and I left to go to my room to await the next vote, we were prepared to talk through the night and to have a discussion on the issues. I am still prepared to do that. I am still prepared to proceed with a reform bill this year. I think one is very necessary, as I tried to explain.

But at the time we determined that the majority should produce a quorum, we, too, became part of the process that set in motion a real collision and the majority leader was faced with a determination of what options he should use when the quorum was not present. He did not face the same problem Senator Barkley faced because we were here, we were not absent. I was in my room. Our side had just determined, as I said, that the majority ought to produce a quorum if it wanted to continue talking on this bill prior to the cloture vote the next day.

I think that we should expect these clashes. Having served in the State legislature, as many of us did, we had similar clashes. But they are different here. They are different here because what we develop as a national precedent now, concerning the use of the constitutional power that is available—and the strange thing is, as we go through it, we may be educated by the majority leader because he will undoubtedly know a great deal more about the history of this than I have been able to look up in this short period of time. But as far as I can determine, there are no guidelines for the use of these. As a matter of fact, it was discussed at the time, at length, in November 1942, concerning that procedure could be used. Senator Barkley made this interesting statement. He said:

Mr. President, there seems to have taken place an exodus from the Senate equal to the exodus of the Children of Israel from Egypt; but there is a sufficient number of Senators in town to make a quorum. I therefore move that the Vice President be authorized and directed to issue warrants of arrest for absent Senators, and that the Sergeant at Arms be instructed to execute such warrants of arrest upon absent Senators.

There was a discussion that ensued about that. Clearly the question that was faced at the time was similar to what we face here.

Mr. Connally asked:

I wish to ask if the execution of warrants would require the Sergeant at Arms to go to the home States of Senators?

And Mr. Barkley said, after some discussion:

Of course, when the Sergeant at Arms produces a sufficient number to make a quorum, which is five—and there are more than that many Senators in Washington, as reported to the Sergeant at Arms—it is not expected that warrants of arrest will be sent to the home States of those who are absent.

That is a nice question, but what happened on the record exists so far if they were indeed absent. In my home State legislature, we have what we call a call of the house. If there is not a quorum present, you can be compelled as a member to come, and until you come, everyone else is locked in the chamber. It becomes a very interesting procedure. It is not used very often because of the restriction you place on your colleagues who are present if you are, in fact, absent. We in the State legislature developed a process of being excused, which is the process we have here. Very few people use it. I use it from time to time. I think it should be used.

But the real point is, in all probability, now that this matter has arisen again, the Rules Committee ought to address it and, as a matter of fact, while it may be difficult to do, particu-

larly after this debate, the Senator from West Virginia probably ought to be one of those who is involved in the review of this constitutional power of the majority of the Senate and the determination of the rules that ought to be used in the future, if it is used again.

I say that to the Senate and to my good friend from West Virginia, advisedly, Mr. President, because I have personally told him in a conversation I had with one Member on this side who told me about the way he felt as he sat in his room waiting for the footsteps to come down the hall. It suddenly struck him that this was a feeling that others had had in other places in the past which had instilled great fear in them, and he started to become afraid. It is a strange feeling that developed in some of our Members' minds as they though they might literally be arrested.

I think we ought to step back from the issue that developed the other night and really look at the power and see if we have the wisdom in future days. It may not be this Congress. We may have to wait until the next Congress, but I hope we can look at it in this Congress and see if we can develop a set of rules that say under what circumstances Members might be brought back to the floor and what are the responsibilities of those who are here.

Apparently, the indication from this RECORD is there was sort of a rolling quorum from the majority, and as some people left, as some people here voted to compel the production of absent Senators, they, too, left, and the question was raised as to whether there was really a quorum at the time these five appeared.

This is 1942 when this power was used before.

The question was raised, and you can find it in the RECORD, during substantial debate: when is a quorum a quorum? Do they all have to stay here or do they just come through and say they are here and put on their hat and leave? But is there still a quorum to do business?

It is a difficult problem for anyone who has the responsibility of the majority leader to face, to maintain a quorum, particularly in that circumstance. It was an intraparty fight, as I mentioned before. This was a total collision of the two major parties of our country. Almost total. There were very few on each side crossing the aisle on the issue, but it was, and still remains to be, a very meaningful dispute between us. We will have to see in the future if we can resolve it.

My purpose for entering into this discussion now is to see if there is not some way we can use this resolution as a vehicle, not only for the restoration of the amicable relationships that have to exist in the Senate across this aisle, but also to draw up on our own feelings now and on the history of the prior use of this constitutional authority, to see if we can set down some guidelines for when should this power be used and under what circumstances; whether or not people out of town should be ruled out from the issuance of subpoenas, and that was the case, by the way, in 1942; whether subpoenas should be tried first, which are different from warrants of arrest; or whether we should go immediately to warrants of arrest. It is possible that we could just issue a subpoena as a preliminary incident.

When I was a district attorney, that is what I used to do. If we had a reluctant witness, we would send out a subpoena and tell him to come. If he would not come, then we would have to go to the court and get a warrant of arrest and arrest him.

There is a great distinction in terms of the power that is employed. If we have the powe.· to issue documents to compel attendance, I assume we could use the lesser power before we use the more stringent power. At least that is my feeling.

I have to ask my good counsel about that, but we ought to look at this now, and we ought to determine how the power should be used, when the power should be used, what are the restraints on the power, and what are the terms under which it might be used. For instance, out of town, in neither of these instances has it been used out of town. But that day might come, and maybe, in the calm that I hope will develop in the Senate in the near future, we could explore that.

Mr. ARMSTRONG. Mr. President, would the Senator yield for a moment?

Mr. STEVENS. Yes.

Mr. ARMSTRONG. I thank him for doing so. The point that the Senator makes about the sequence in which motions are offered is a very interesting one. I would just like to mention to him, as he reflects on this, that in Dr. Riddick's commentaries on the procedures of the Senate, he cites that a motion to compel attendance is out of order prior to action on a motion to request attendance.

I do not know that that is precedential in this case. I hope it will at some point be precedential. It certainly is evidence to support the point that the Senator was making, that we should not proceed to the most extreme remedy, but proceed in an orderly way through those remedies that are in increasing order of extremity, depending on the situation.

Mr. STEVENS. I thank the Senator. It is not directly related, but I do want to say I did have a conversation recently with my good friend from West Virginia—and I hope he does not mind my saying this—that I feel sometimes we ought to find ways not to use as often as we do the motion to instruct, which requires us to come over and vote on whether we should ask the Sergeant at Arms to compel attendance. By virtue of doing that so much, people ignore it.

When I first came here, when you had the three bells, the live quorum, we came. No matter what the issue was, we came. We had very few instances in which we had the actual recorded vote on whether we should be compelled to be present.

In connection with the problem that I perceive of the opening of the Senate, we open the Senate with a prayer in the morning, and there are usually two people. I do not think any man in history has stood here more than the Senator from West Virginia, in terms of the opening of the Senate, as leader; and there is always someone on our side. I have been here quite often where it is just the two of us, the Presiding Officer, and the Chaplain of the Senate.

I believe we ought to adopt the policy of trying to encourage Senators to be here to keep a quorum on the floor in the event it goes back to debating.

Mr. BYRD. Mr. President, would the distinguished Senator yield?

Mr. STEVENS. Yes; I will.

Mr. BYRD. I believe Senator ARMSTRONG earlier quoted Dr. Riddick. Would the Senator quote Dr. Riddick again? Would the Senator allow me to propound this question?

Mr. STEVENS. I will be happy to do so.

Mr. ARMSTRONG. Mr. President, I will be happy to do so. The Senate procedure at page 174, cites that. The point I was making was simply in response to that which the Senator from Alaska has made that there ought to be some sense of proceeding with the less extreme measure before going to the more drastic measure. At least in the case cited on pages 174 and 175, that was held to be the rule of the Senate. Let me just read it briefly. It is only a few lines:

> During the absence of a quorum, an order may be adopted to direct the Sergeant at Arms to compel the attendance of absent Senators. Such an order should not be resorted to until after an order requesting their attendance has been adopted, and it has been held not in order prior to a motion to request.

Mr. BYRD. Mr. President, would the distinguished Senator yield?

Mr. STEVENS. I am happy to yield to my good friend.

Mr. BYRD. If the distinguished Senator from Colorado will research further he will find that more recent precedents do not support that. I read from George H. Haynes, on "The Senate of the United States," as follows:

> Must Sergeant at Arms first be directed to request before being directed to compel the

attendance of absent Senators? In 1879 by a vote of 24 to 12 the Senate determined this question arising under the old rule in the affirmative.

In other words, the Sergeant at Arms must first be directed to request before being directed to compel. That was February 24, 1879. When the point was raised in 1915, on the rule in its present form, however, Williams declared:

The Senate has never ruled that you could not compel until after you had requested and the Presiding Officer, Ashurst, ruled that it was in order to compel the attendance of absent Senators before requesting them to return.

February 8, 1915, CONGRESSIONAL RECORD, 3276, page 353, "The Senate of the United States," by George H. Haynes.

I thank the Senator for yielding.

Mr. STEVENS. I thank the Senator.

Mr. ARMSTRONG. Mr. President, I have no desire to pursue the point. The fact that precedent has been subsequently overruled does not change my view of the propriety of the matter. Obviously, new precedents are established routinely around here and in many cases are established on nothing more than a majority vote.

My point was that on some occasions, at least, in the past it has been held a proper sequence of events and it seems to me to be one which is wise and a good practice. Whether it is binding precedent of the Senate, I would defer to the leader's interpretation.

Mr. BYRD. Mr. President, if the distinguished Senator from Alaska will yield, I will not ask him to yield again, and I will be brief. I would not cite Haynes, necessarily, except for the fact that the distinguished Senator from Colorado was citing Dr. Riddick on a certain precedent. I thank the Senator.

Mr. STEVENS. Mr. President, let me come to an end soon here, but I think the record ought to show that in 1942, when this power was used before, as I said, the feelings persisted for a period of time after that. Senator Russell of Georgia was one of those who—he actually offered a motion to amend the record. That was suggested on this side, by the way, and I was one of those who suggested that, instead of getting into a constant battle over this, we ought to see if we could not find some way to refer this to the Rules Committee or to a committee. I think I suggested a bipartisan ad hoc committee to review this.

Senator Russell said this on November 17, remember this is 3 days later. He said, "I was incorrect as I read it. It was not 15, it was 8 * * *" for a sufficient quorum. He wanted the record to disclose the names of those who refused to answer their names. Some of them were present and refused to answer present. Some were in the building and refused to come. Others were out of the building, others were out of town. And he said he thought that, I am picking up at the end of his quote:

* * * the Journal ought to disclose the names of those who were here and those who did not respond when their names were called.

He said:

That is more important, Mr. President, when you consider the very unusual proceedings in this body * * * Saturday last. At that time a quorum was called, and disclosed that 52 Senators were absent from the Senate. The rules of the Senate proscribed the method of procedure following less than quorum present. Those rules were not followed on last Saturday. On the contrary, although the rollcalls disclosed 52 Senators were absent from the body, and unusual heard of procedure was adopted whereupon motions were made, and warrants were issued for the arrest of 8 of the 52 who were absent.

I have to say to my good friend, I do not know, I have not even asked how many warrants were issued the other night. But this feeling persisted for a great period of time in 1942, and I am afraid it is going to persist for a great period of time now, unless we step back, as I said, from this, and say: Should we learn something from this collision, and should we use our experience and knowledge, and try to define the ways in which this power should be used in the future, if ever, and under what conditions, and to whom it should be applied?

But furthermore, should we turn this over and should we look at the whole question of how the Senate runs itself? I note, for instance, as I go back in the CONGRESSIONAL RECORD—I am sure the Senator from West Virginia has noted this, too—in many Congresses, the Senate adopted the policy of having a quorum call after the prayer without a motion to compel. They just appeared, they just had a rollcall, they just appeared, and that was it.

In the very first page in this volume of the CONGRESSIONAL RECORD I have of October 20, 1942, they had the Journal read, the message from the President, and a quorum call, and it was completed very quickly, obviously. It appears to me that from the timeframe in it, they were here on the floor.

Senator HEFLIN is just back from a visit to the Philippine Senate, and others have been visiting senates around the world. Many institutions have a concept of just custom that the Members come to the floor when it opens, listen to their prayer, and then go to their business.

I think we might learn from what has gone on. We ought to have some sort of a quorum-proof procedure, procedure to prove the presence of a quorum but does not require us to come and vote on a motion to authorize the Sergeant at Arms to compel our attendance unless it is really needed, and reserve that motion for the extreme cases. And we would know it was then an extreme case. If we could change the procedure of the Senate so we would appear voluntarily more often I think it might restore some of the meaning to that motion.

I think I dragged on.

Mr. BYRD. Mr. President, would the Senator yield?

Mr. STEVENS. Yes.

Mr. BYRD. I want to compliment the Senator on his suggestion with respect to having Senators present on the floor at the time the Chaplain delivers the prayer. I am very wholeheartedly in favor of that suggestion. And I would hope that we would give our thought to efforts to encourage that. The distinguished Senator discussed this with me, I believe, just last evening or a day or so ago. I very much appreciate his proposal.

Mr. STEVENS. I thank the Senator. As the Senator from West Virginia knows, I sometimes just wonder—and I am not part of the leadership anymore, although I come to listen to the prayer in the morning when I particularly feel that maybe I need some guidance from somewhere or someone before I start the day here. But it seems to me, and I mentioned it to the Senate prayer group the other morning, I think we ought to do that because it must be a lonely thing for the Chaplain to stand up there and look at 100 seats and 2 people standing in front of 2 seats. It ought to change in my opinion. We ought to show great respect for the Chaplain himself, not only the procedure that he is part of, but the Chaplain himself.

Mr. President, I urge on the Senate, first, the majority understand the feelings of the minority in this instance because having gone through seven cloture votes, the minority was prepared for another cloture vote, but they were not prepared for the battle over whether or not we should have a quorum during the debate that took place prior to that cloture vote through the night that was contemplated. And if there was to be a quorum, it was the feeling of many on this side that the majority had the responsibility as the majority to produce that quorum.

But, second, and even more importantly, I think in my conversations with the Members of the Senate who were deeply, deeply affected now by the procedure that was followed, it is not a partisan reaction. It is more the reaction of someone, as I said before, who suddenly found, as McKellar did, that he was liable to be the person who would be responsible for changing the circumstance from the side that he represented.

Even my good friend, Senator PACKWOOD decided not to walk in the door.

He wanted to make sure they carried him in so all of us would know he did not come here to break the solidarity of our group's position. I have to say I think he handled that with good humor and in the whole concept the Sergeant at Arms was and is a gentleman in the way he carried out his duties. But it demonstrates to me that the feelings that exist over on this side are not political, they are not related to S. 2. They genuinely want us to explore whether or not Senators, in this Congress or future Congresses, will be subjected to similar feelings they had that night and under what circumstances should that power be exercised.

Third, my point in being here is that it would be a great symbol to many on this side if the majority leader and our good friends on his side of the aisle would recognize those first two points and in a spirit of comity say, OK, let us go to the Rules Committee, let us do some research, let us take advantage of this vast knowledge that the Senator from West Virginia as the majority leader possesses. And no one on my side is ever going to challenge my claim that nobody now in the Senate knows more about the history of the Senate than the Senator from West Viriginia. If he truly understands—and I think he will—the roots of this request made today, then I think we will find some way to evolve a procedure that would be followed in the future and we will not rely on the ad hoc judgment of the person in the chair, the majority leader, who, by definition, at that time will be under deep stress, and the Parliamentarian, who is trying to devise an answer to questions that are coming from all sides of how do you do this if you really want to do it.

I think we ought to take the task on now. I think this Senate has had an experience from which we ought to learn a lesson. One of the lessons ought to be that we can assure that if the power the Constitution gives the Senate is ever used again, it will be used in a manner which attempts to the greatest extent possible to avoid the reaction that came in 1942 and is present in the Senate today.

Mr. President, I ask unanimous consent that I be permitted to place in the RECORD following my statement some press accounts of the 1942 incident. I think they go to the same point I am trying to make. The Senate at that time was urged to set down some rules as to how this would be done if it was ever used again, and it did not.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

ARRESTS COMPEL SENATE QUORUM—3 OF 8 RESPOND TO WARRANTS ISSUED AS POLL-TAX FILIBUSTER TURNS TO ABSENTEE TACTICS

WASHINGTON, Nov. 14—With filibuster tactics against the poll tax repeal bill turning on the second day from sustained oratory to absenteeism which prevented a quorum, the Senate ordered the arrest of eight of its missing members, six of them from Southern poll-tax States.

This drastic action, taken for the first time since the conflict over Boulder Dam in May, 1928, was directed on motion of Senator Barkley of Kentucky, the majority leader, to instruct Vice President Wallace to sign the warrants.

Senator McKellar of Tennessee was actually arrested by a deputy sergeant at arms after a maid unlocked a door of his suite at the Mayflower Hotel.

Senators Maybank of South Carolina and Bunker of Nevada were put under "technical" arrest. Mr. Maybank, reached at his home by telephone, accepted a ride to the Capitol in an automobile sent for him. Mr. Bunker walked into the chamber while he was being sought elsewhere.

FIVE WARRANTS OUTSTANDING

When the debate got under way, three hours and forty minutes after the chamber was called to order at noon, warrants were still out for five others, including Senator Hill of Alabama, the majority whip, whose job it is to round up Democratic absentees, Senators Doxey of Mississippi, O'Daniel of Texas, Russell of Georgia and Overton of Louisiana.

As Senator Bilbo of Mississippi resumed the debate which he began yesterday afternoon, he denounced the press, radio and other channels for distributing news suggesting that a filibuster was in progress. He predicted that consideration of this legislation would continue until Jan. 3, when the present Congress expires and the new one takes over.

From the outset of the day's session Senator Barkley kept at the task of getting a quorum. When only twenty-six members responded to the first calling of the roll, a call for absentees was ordered.

When only five more members appeared, Mr. Barkley moved that the sergeant at arms, Chesley W. Jurney, be directed to inform absent members that their presence was wanted in the chamber.

Thirteen members entered, but the Senate still lacked five to make a quorum.

Mr. Barkley then moved that the Vice President be directed to issue warrants for the arrest of the eight still missing members who, he had been informed, were in the city.

The warrants, "commanding" the sergeant at arms "forthwith to arrest and take into custody and bring to the bar of the Senate" the designated members who were "absent without leave," were turned over to Mr. Jurney.

Finding doors locked at the offices of missing Senators, Mr. Jurney deputized John J. Kearney, custodian of the Senate Office Building, to unlock them with his master key.

While this fruitless search was going on, Senator Herring of Iowa and Senator Aiken of Vermont, who were not known to be in the city, and therefore had no warrants issued against them, appeared in the chamber. This left three members to be found to make a quorum of forty-nine.

Then Mr. Bunker came in, followed by Mr. Maybank. Neither believed himself to be under even technical arrest, but Mr. Jurney said they were. Mr. McKellar made up the quorum and Mr. Bilbo began speaking.

NEW START NOW REQUIRED

Throughout the actual session, which lasted until nearly 6 P.M., no mention of the move to compel the presence of absentees was made.

When the Senate adjourned tonight it wiped its slate clean, leaving nothing, not even Mr. Barkley's motion to take up the poll tax repealer.

Mr. Bilbo lost the floor, because also expiring with the adjournment was the appeal from a presiding officer's decision yesterday that the measure was reported in regular order to the Senate by the Judiciary Committee.

Mr. Barkley said that he would renew his motion to call up the bill when the Senate met on Monday, and Senator Pepper of Florida, author of the measure, joined him in declaring that the fight for it would not be dropped.

Meanwhile, however, word was sent to forty-two members of the Senate who were known to be out of the city to be here on Monday. The outstanding warrants, it was said, were being held in abeyance.

---

PRESS FILIBUSTER IN POLL TAX FIGHT—SOUTHERN SENATORS CONTINUE TACTICS OF OPPOSITION TO REPEAL BILL

WASHINGTON, Nov. 16.—Southern opponents of the House bill to outlaw poll tax payments as a requirement for voting in eight Southern States won the third day's round today in their effort to prevent Senate consideration of the measure.

They achieved this victory by preliminary maneuvering which resulted in nine delaying quorum calls in two hours and promised later that they have another parliamentary trick ready to spring tomorrow, when Senator Barkley, Democratic leader, will make his fourth attempt to make the bill the Senate's pending business.

As the day's two-and-a-half-hour session ended futilely for the bill's proponents, they indicated that their chief hope of being able to get action before Dec. 31, when this Congress ends, lay in aroused public antagonism to the Southerners' tactics.

However, Senator Bilbo of Mississippi, who has promised to speak for thirty continuous days against the bill if it can be brought up, voiced confidence tonight that his group will prevail.

Senator Barkley's defeat today resulted in clever use of seldom invoked Senate rules. One such rule provides that the full list of all bills already reported to the Senate for action can be taken up on any Monday and that a motion is in order to make any one of these bills the pending business until it is disposed of. Such a motion is non-debatable and must be voted on at once, but it can be made only in the first two hours of the session devoted to running through this list of bills and only when the bill in question is reached in its order on the calendar.

Since sixty-seven bills, mostly minor ones, preceded the poll tax bill, the delaying tactics of the opposition were easily accomplished.

Senator Bilbo later told gleefully what his tactics will be tomorrow.

"The Senate," he said, "has got into a sloppy habit of approving the journal of the previous day's proceedings without having it read. This is bad. The journal should be absolutely letter-perfect as a record for all future generations to depend upon without question.

"Tomorrow we are going to insist on following the rule providing for its reading if

any member demands it, and I am sure we will find misplaced commas and semicolons and such like that must be corrected to consume the two hours which the rules permit for such consideration."

The opposition did not attempt today to use its Saturday tactic which resulted in the technical arrest of several Senators—that of persuading a majority of the members not to answer quorum calls, thus blocking any Senate procedure. The number answering today on the nine roll-calls ran an average of four or five above, the forty-nine required for a quorum.

However, Saturday's action brought some tart comment today from Senator Barkley and some critical remarks from Senator Connally, one of the bill's opponents.

Mr. Barkley said he had noted that quite a few members "who were for this measure or pretended to be for it before election" had joined its opponents in absenting themselves from Saturday's quorum calls. Any member had the right to be for or against the bill, he said, but he did not believe any had a right to seek to delay or block action by such procedure, or by such as those resorted to today.

Mr. Connally retorted that his party leader was "taunting" Senators who did not want the bill brought up because they believe it will disrupt the Democratic party at a time when national unity is imperative.

"We came out of the recent election with our legs almost shot off and our heads bandaged," he said, "and now the Senator wants to give us the coup de grace when we are just barely able to wabble."

---

[From the New York Times, Nov. 18, 1942]

BARKLEY ASSAILED IN POLL TAX FIGHT

(By Frederick R. Barkley)

WASHINGTON, November 17—Senators from eight Southern States which tax the right to vote for candidates for Federal office succeeded today for the fourth successive day in blocking efforts to bring up the recently passed House measure which would abrogate such taxation.

Using the fourth device pulled from their bag of parliamentary tricks, the Southerners kept the Senate in session more than five hours, during which nothing was accomplished. They said they would continue using the new tactic, reading and correcting the journal of the previous day's proceedings, to the same end for nearly two weeks more.

Outside of the parliamentary maneuverings, the chief event of the day was a personal attack by Senator McKellar upon his party leader, Senator Barkley, because the Senate ordered his "arrest" on Saturday for failing to respond to quorum calls. Mr. McKellar said this action, for which he blamed Mr. Barkley, had "besmirched" a lifelong record on which there was no stain.

In reply, Mr. Barkley said that while he had compiled from records provided by Senate attachés the names of eight members who were in town but not in Senate attendance and moved that they be brought into the chamber, it was the Senate, not he, which ordered this action.

MCKELLAR ASSAILS COLLEAGUE

Standing at his seat next to the majority leader, Mr. McKellar shouted that as the result of Saturday's action he had removed his name from a joint Senatorial letter to President Roosevelt which he composed only last week, asking the President to nominate Mr. Barkley for the Supreme Court vacancy.

His face flushed with indignation, he also recalled that when there was a contest for the majority leadership six years ago between Mr. Barkley and the late Senator Harrison he had voted and worked for Mr. Barkley and that Mr. Barkley had won by only one vote.

"And that was my vote," he shouted, "my vote which I switched from my dear lifelong friend, Pat Harrison, to the man who has now turned against me and had me arrested.

"The only heritage my respected father left me was the admonition: 'Keep your record clean.' For more than fifty years as a man and twenty-six years as a Senator I thought I had kept it clean, even to the matter of attendance in the Senate. Why, even in the last year I have been absent from only eight of the 267 roll-calls, while Senator Barkley has been absent from twenty-one.

"And yet this man has me arrested and brought here to give him a quorum—something he couldn't do anything with even after he got it."

"Being called a filibusterer holds no terrors for me," he shouted at another point, pounding the adjoining desk of Mr. Barkley, who sat impassive within reach of the Tennessean's fist. "I will filibuster to the last breath and by every means, if necessary, to defeat this iniquitous measure."

Commenting on reports that he sat in another than his usual seat yesterday because he wanted to get away from Mr. Barkley, with whom it is reported he has not spoken since Saturday, Mr. McKellar said:

"No, my friends in the press gallery, I just moved over temporarily to confer with my new leader, Senator Connally. I expect to occupy my regular seat for many years to come."

At another point, he said that Mr. Barkley had referred to the flights of opposition by Senators from the chamber to prevent a quorum as like "the exodus from Egypt."

"But the people who made that exodus had a real leader who led them to the promised land," he shouted. "Our so-called leader is leading us straight into the Republican party."

BARKLEY EXPLAINS ACTION

In reply, Mr. Barkley said it was always unfortunate when legislation turned on personalities.

"What I did Saturday was not aimed at any of my colleagues," he said quietly. "It was my duty under the Senate rules to obtain a quorum, unless indeed we wanted to notify the nation that the Senate is impotent to act—an idea which the Senate rejected.

"But I don't intend to be goaded into animosity or resentment against any member of this body, even the Senator from Tennessee. It may be only a coincidence that most of the eight absentees cited in Saturday's order were opponents of this bill, but my action would have been the same if they had all been for it."

Then, turning to the issues in the bill, Mr. Barkley declared that if the only way the Democratic party could survive was to tax the right of poor people to vote for Federal officials, "then the Democratic party is built on sand."

The moves in today's filibustering were first to demand reading of the journal of yesterday's proceedings and then to move to amend it by inserting the names of all Senators who did not answer the day's nine quorum calls and one roll-call vote.

Senator Russell, who operated the scheme, moved to include the names of absentees on only one of these calls. As the day ended, Mr. Barkley moved to table this motion, an undebatable move which must be voted on early tomorrow. But then any poll-tax supporter who can gain the floor can move to amend a second quorum call in the same way and hold the floor all day talking on any subject that he fancies.

Mr. Russell today spoke on Georgia's history in all the wars of the past for the hour or more necessary to block Mr. Barkley's chance to move effectively to make the poll-tax bill the pending business until disposed of.

Mr. Barkley said today that the bill's supporters would make the best fight for it that they could, and that even if they failed, the Senate debate might lead the Southern States to repeal the poll taxes by their own action.

---

NATION ENRAGED, SAYS MURRAY

WASHINGTON, November 17.—Philip Murray, president of the Congress of Industrial Organizations, sent a letter to members of the senate today, declaring that "the nation stands aghast and enraged at the tactics of a small bloc which is seeking to frustrate majority rule in this nation."

He called for speedy enactment of the anti-poll tax legislation, asserting:

In this period of national crisis, the opening of our polling places to every qualified citizen in the nation by the elimination of poll-tax restrictions which disenfranchise large numbers of American citizens is a measure essential to our war effort."

GROUP HERE HITS FILIBUSTER

A telegram, signed by twenty-one persons, was sent from New York yesterday to Senators Barkley, Norris and La Follette, condemning the Senate filibuster on the anti-poll tax bill and urging adoption of the measure.

The telegram, as made public at Freedom House, read as follows:

"Senator Bilbo and other 'poll tax' Senators are committing two crimes against the American democratic idea. They are employing the filibuster, in which a minority resists the majority's will to act; they are endeavoring to continue the discriminatory poll tax, which is a subterfuge for defiance of the Thirteenth Amendment to our Constitution.

"We, the undersigned, therefore record our condemnation of the present filibuster in the United States Senate against the anti-poll tax bill and earnestly hope that the long-delayed measure will be speedily adopted. Unquestionably our enemies, particularly Japan, will use this situation to convince the colored peoples of the Orient that we have been hypocritical in our declarations for a free world. We believe that immediate repeal of those laws which encourage discrimination because of race, color or religion is an important step in our march to victory.

The signers were S. Stanwood Menken, Harry D. Gideonse, Herbert Bayard Swope, Dr. Harry A. Atkinson, Stephen Vincent Benet, Mme. Alma Clayburgh, the Rev. Vincent Donovan, William Jay Schieffelin, the Rev. George B. Ford, John Farrar, Freda Kirchwey, Fannie Hurst, Mrs. Albert Lasker, Mrs. Harold Guinzburg, George Filed, Mrs. Andrew Jackson, Mrs. Ward Cheney, Mrs. Herbert Agar, Mr. and Mrs. William Agar and Mrs. Elsie B. Wimpfheimer.

[From the Washington Post, Nov. 15, 1942]

"ARREST" OF ABSENTEE SENATORS HALTS FILIBUSTER ON POLL TAX—NOW THEY'LL START AGAIN

(By Edward Ryan)

The Senate late yesterday called a halt to the filibuster against poll-tax repeal after staging its first full-scale manhunt for absent members in 15 years.

By adjoining at 5:50 p.m. the chamber swept aside a parliamentary blockade laboriously constructed during two days, and agreed to begin again from scratch tomorrow.

The manhunt was ordered when not enough members showed up to hear Senator (The Man) Bilbo (Democrat) of Mississippi, begin the second installment of his projected 30-day discussion of the poll-tax repeal bill in all its ramifications.

Before the hunt ended, three members had been "arrested," or at least shown the formal Senate warrants for their arrest and appeared in the chamber. They were Senators Bunker (Democrat) of South Carolina and McKellar (Democrat), of Tennessee. Warrants for five others were left unserved.

With the appearance of Senator McKellar at 3:42 p.m. the roll of Senators listed as present was boosted to the 49 necessary for a quorum and Senator Bilbo resumed his analysis of the poll tax bill—with less than a score of members actually in evidence on the floor. He continued for about two hours, until adjournment was proposed.

Before adjourning. Majority Leader Barkley (Democrat) of Kentucky ordered Senate officials to notify all members to return for the session tomorrow.

Principal aim of the adjournment, it was learned, is to get the poll tax repeal bill actually before the Senate before any filibuster gets rolling again. So far the legislation had not been before the Senate. Instead, this was the situation.

Barkley had moved Friday to consider the poll tax bill. Senator Doxey (Democrat) of Mississippi had shot in a point of order that the bill could not be brought up since no quorum of the Judiciary Committee had been on hand to report the measure to the Senate. Doxey's point was overruled, whereupon Senator Connally (Democrat) of Texas appealed the ruling. His appeal opened the way for unlimited debate—and for Bilbo's 30-day speaking campaign.

TO BE REPEATED TOMORROW

This process was scheduled to be repeated exactly, tomorrow—up to the appeal. At that point, it was understood, supporters of the legislation will move to table the appeal—a motion which cannot, be debated, but can be settled by majority vote. If the poll-tax repealers win in. Barkley's proposal to consider the bill can then be approved by a majority vote. The bill would then be before the Senate—and the way cleared again for unlimited debate, and the filibuster.

Said Bilbo: "I'm getting along fine.

"I'll be sitting around, loaded for bear, and ready to shoot when I see the whites of their eyes. It will take me five days to introduce the subject, 20 days to argue it, five to conclude. I'm rarin' to go."

Yesterday's standstill session got under way at noon. By agreement of the day before Bilbo had the floor to continue his speech. But Senator Connally objected that no quorum was present.

26 ANSWER ROLL CALL

A roll call produced 26 Senators, a recheck brought two more. Senator Barkley, at 12:20 p.m. asked that Sergeant at Arms Chesley W. Jurney be instructed to notify the absent members that "their presence was desired" on the Senate floor. Thereafter, a partial timetable of the session ran about like this:

12:55 p.m.—Forty-four of the necessary 49 Senators had turned up. Senator Barkley proposed that Jurney be ordered to "compel" the attendance of absent members.

1 p.m.—Senator Connally asked, "When a Senator answers to his name and then gets his hat and walks away, is he still counted for a quorum?" and received the answer that his was not a parliamentary inquiry.

1:20 p.m.—Sergeant at Arms Jurney reported 42 Senators as being out-of-town, and eight more as being in Washington but not to be located at their homes or offices. Senator Barkley observed that exodus from the Senate appeared like that of the children of Egypt, and proposed that warrants be issued for the arrest of the eight.

CONNALLY OBJECTS IN VAIN

Over Connnally's objection, Senator Green (Democrat) of Rhode Island, acting president of the Senate, signed the first warrants for the arrest of absent members since the Boulder Dam fight of February, 1927. The warrant commanded Jurney to "arrest, take into custody, and bring before the bar of the Senate," these members:

Senators Bunker, Maybank, McKellar, Doxey, Hill (Democrat) of Alabama; Overton (Democrat) of Louisiana; O'Daniel (Democrat) of Texas; and Russel (Democrat) of Georgia. All but Bunker are opponents of the poll tax repeal.

Senator Connally protested the action as "outrageous," charging that custodians of the Capital were being ordered to break into the offices of Senators. He observed: "If anyone broke into my office he'd not be able to break into anyone else's office for at least 24 hours."

2 p.m.—Jurney dispatched Deputy Sergeant at Arms J. Mark Trice, and Special Deputy William Cheatham to round up the eight members. Asked whether he would join the search, Jurney said no, explaining that someone would have to stay at the office and receive reports.

HERRING SHOWS UP

2:08 p.m.—Senator Herring (Democrat) of Iowa, one of those earlier listed as out of town, entered the Senate chamber.

2:10 p.m.—Senator Bunker, located at his office by the searching party, came in, and shortly afterward replaced Senator Green as presiding officer.

2:45 p.m.—Senator Aiken (Republican) of Vermont, another on the out-of-town list, arrived.

3:19 p.m.—Senator Maybank arrived from his home at 2420 Sixteenth Street Northwest, remarking later that he had just enjoyed his first limousine ride at Government expense since coming to Washington. He said he had planned to go to his office, and the "arrest" had saved him taxi fare. Denying that it had been an arrest, he said, "They just called me up." (While deputies said they had served the warrants, Jurney said rather that the three members had been "shown the warrants.")

3:42 p.m.—Senator McKellar, located at his apartment in the Mayflower Hotel after telephoning had brought no response, arrived at the chamber, answered to his name, making the forty-ninth Senator "present," and promptly entered the Democratic cloakroom off the floor. He was reported to have left the cloakroom by another door a few moments later. He was said to have been provoked by the "arrest," protesting it had interrupted preparation of a speech on the poll tax. He did not return to the floor. Service of the other warrants was deferred.

3:45 p.m.—Senator Bilbo was in full swing.

ATTENDANCE DROPS TO FOUR

He charged that the sponsors of the legislation were to blame for bringing an "impasse in the orderly processes of government in the midst of war." There were more important bills on the calendar, he said, and the sponsors of the poll tax bill knew in advance that their measure would bring a long debate. "We oppose the legislation on the ground that it is clearly unconstitutional," he declared.

Why, he demanded, were sponsors of the bill "willing to split the Solid South and crucify the party they claim they belong to in the midst of a war?"

4:57 p.m.—Attendance on the floor dropped to four (including Bilbo), low for the day.

5 p.m.—"in conclusion" cried Bilbo—and Senators Barkley, Aiken, and Langer (Republican) of North Dakota, looked up from their conversation in apparent surprise—but it developed that Bilbo was simply quoting a transcript of testimony before the Judiciary Committee.

5:05 p.m.—Connally asked whether Senator Bilbo had named "one of the most distinguished sponsors of this legislation, Carl Browder (the Communist leader)."

"I haven't got to him yet," said Bilbo. "I'm saving him for the third week."

5:35 p.m.—Barkley stepped back and conferred with Connally, who walked over and spoke to Bilbo. Said Bilbo: "If my distinguished friend, the majority leader, wants to adjourn, I have no objection, so long as I would be permitted to continue my speech."

Barkley replied that if the Senate adjourned the proceedings of the two days would lapse. "You mean I would not be able to continue my line of thought?" asked Bilbo.

Barkley said that Bilbo had been at fault in not claiming the floor at the beginning of the day—a move which would have blocked the point of no quorum. Bilbo complained that the chair "would not look my way."

However, Barkley said he could not agree to having Bilbo continue to hold the floor and continue his speech tomorrow, and Bilbo said that "out of deference to my colleagues," he would take his chances on being recognized when the Senate meets again.

SENATORIAL ANTICS

[From the Washington Post, Nov. 15, 1942]

The Senate punched a gaping hole in its reservoir of good will yesterday. Senator Bilbo's filibuster had previously sloshed a good deal of water over the sides of that same reservoir. Today it is leaking in much the same way that it leaked several months ago when Congressmen voted pensions for themselves. And the precious fluid that is running out is the faith of the American people in their chief instrument of representative government.

The necessity of issuing warrants for the arrest of absentee Senators to obtain a quorum is a severe reproach even in time of peace. In wartime such drastic measures to compel delinquent legislators to attend to their duty are the gravest sort of reflection upon their patriotism. And that is particularly true when some of the absent members appear to be hiding out to thwart legislative

action. The impotent minority is to be congratulated on its forthright efforts to round up the slackers by force, but that will not save the Senate from another critical sinking spell so far as the esteem of the public is concerned.

Mr. Bilbo's filibuster threat was bad enough. Even if the Senate had faced that threat courageously, the Mississippian's slurring remark to the effect that he doesn't need his mind very much in the Senate would have reechoed loudly in circles where representative government is under attack. But the situation was made much worse when more serious-minded Senators apparently lent their support to Mr. Bilbo's sabotage tactics. So news has gone out to all the country that, while our soldiers are fighting and dying on far-flung fronts and while momentous wartime issues await legislative action, the Senate is paralyzed by a little game of peanut politics.

We think that the sponsors of the bill to abolish the poll tax are ill-advised in pressing for action on that measure. Its constitutionality is open to grave doubt. But the tactics by which some Southern legislators are fighting it are so indefensible that they will likely alienate whatever sympathy remained for full State control over election machinery. Certainly this bill is insignificant compared to the preservation of faith in Congress as a responsible legislative body in this world-wide crisis. And that faith begins to crumble dangerously every time Congress indulges in such frivolous antics as those which have been witnessed in the Senate during the last two days.

---

[From the New York Times, Nov. 18, 1942]

THE SENATE FILIBUSTER

The old question of majority rule vs. minority rights is raised whenever the business of the Senate is held up by a filibuster. The delaying tactics of empty debate and incessant demands for a roll-call can be defended up to a certain point. There have been occasions when a small minority, deeply convinced of the justice of its cause, has served the country well by postponing action on some controversial question until the merits of the issue were better understood or the will of the people was revealed more clearly.

We do not believe that any justification of this kind can be found for the filibuster which is now in progress against Senate action on the proposal to outlaw the poll tax in Federal elections. This issue is well understood. It has been debated, times without number, over a long period of years. There is no need for delay in order to clarify the question. On logical grounds the proposal justifies itself. Elective Federal officers, from the President down, have a voice in the affairs of every citizen of every State. There is no desire, or intention, on the part of the States which have no poll taxes to interfere in the local business of the eight States which have such requirements for voting. The real question is whether or not the citizens of forty States have a right to see to it that the citizens of eight States are not misrepresented or under-represented in Federal elections.

That is the issue. Its merits should be decided by the democratic process of a full and fair debate, to be followed by a vote. The Senate minority which is now deliberately obstructing such a vote, and delaying the work of Congress in wartime, is giving a poor exhibition of democracy.

[From the New York Times, Nov. 19, 1942]

SENATE FILIBUSTER DECRIED—ROW OVER POLL TAX REPEAL CONDEMNED AS BAR TO NEEDED LEGISLATION

TO THE EDITOR OF THE NEW YORK TIMES:

Many Americans besides myself who are greatly concerned that our country should become truly democratic in every aspect of its life welcomed, I am sure, the wholehearted support which the Times gave the anti-poll tax bill and the clear statement of the reasons for its passage expressed in several editorials.

Now we are confronted by the unhappy spectacle of the Senate of the United States being prevented from a consideration of that bill and of other legislation vital in an hour of national emergency by a small group of obstinate and selfish Senators who are attempting to obstruct the normal progress of legislation by filibuster.

These Senators would answer that the Senate can get on with the business of winning the war if the proponents of the bill, who must be in the majority or there would be no need for a filibuster, will give up their efforts and a vote. That is, the policy of the Senate in regard to an issue of fundamental importance, involving as it does democratic principles which must be affirmed or denied by our actions, is to be dictated by a small minority.

Both the opposition to the bill itself and the methods which are being used to prevent its consideration are dangerously un-American and undemocratic.

The vast majority of the American people bitterly resent having the institutions which they are willing to defend if need be with their lives made a hollow mockery in the eyes of the world. They realize—even if most of Senate does not—that the fight for freedom must be waged in the Senate chamber as well as on the coasts of North Africa and the Solomon Islands.

MIRIAM A. HUFFMAN.

New York, Nov. 17, 1942.

---

STALEMATED SENATE SHELVES CAMPAIGN MEASURE

(By Janet Hook)

An acrimonious, weeklong debate over campaign-finance legislation (S. 2) in the Senate has left its Democratic backers stymied, Republican opponents bitter and the Senate as a whole nursing deep partisan wounds.

The bill was shelved Feb. 26 after three days of round-the-clock Senate sessions aimed at wearing down the opposition and heightening public awareness of problems in the campaign-finance system.

But neither goal was fully realized.

Democrats could not break a GOP filibuster against the bill, which would limit campaign spending and the role of political action committees (PACs) in the Senate elections.

And substantive debate on the campaign-finance issue was overshadowed by the controversial tactics deployed by both parties—most notably, the midnight mayhem surrounding the Feb. 24 arrest of Republican Bob Packwood of Oregon, who was carried onto the Senate floor for a quorum call. (Packwood, p. 487; history, p. 486.)

The legislation was pulled from the Senate floor after a record-setting eighth cloture vote Feb. 26 failed to limit debate. The 53-41 vote fell seven votes shy of the 60 needed to cut off a filibuster. (Vote 30, p. 547.)

"We have fought the good fight . . . [but] we have not finished the course," said Majority Leader Robert C. Byrd, D-W.Va., who said the issue could still be revisited later this year.

But most senators assume the bill is doomed for the rest of this Congress.

"We have now slain the dragon eight times," said assistant GOP leader Alan K. Simpson of Wyoming. "I don't know what else you can do to send a message to the people that seem obsessed with this that it's over. We must now move on to other things."

David L. Boren, D-Okla., a principal sponsor of S. 2, acknowledged, "There is no sense going up and down the same hill 15 times."

But he and Byrd said they believed the talkathon on S. 2 had been an important step toward building public support for campaign spending curbs.

"One thing has been achieved, and one thing is certain—this issue is on the national agenda to stay, until we deal with it," Boren said.

But some S. 2 backers were frustrated not only with GOP obstructionism but also with Byrd's hardball floor strategy of non-stop sessions and the controversial arrest of Packwood.

"We lost the high ground with the confrontation and the comedy that came about as a result of the last two nights," said, a freshman Democrat, adding that Byrd's tactics fueled dissatisfaction with his leadership among junior members.

With the debate coming at a time of doubt about Byrd's future as leader, this senator said. "I think it lends further support to those who are beginning to make the case for the next generation of leadership in the Senate. This is old-time politics." (Byrd, p. 490.)

But Common Cause, the lobbying group that has been a principal force behind S. 2, praised Byrd's "tenacity, perseverance and extraordinary leadership" on the issue.

The week's siege on the Senate floor opened schisms between the parties unusually deep for the Senate, which generally operates more by consensus than does the House.

Richard G. Lugar, R-Ind., said the debate was marked by the "most egregious partisanship since I've been here. I chalk it up as a bad dream."

Said Bob Graham, D-Fla., "It's going to require some assertive acts of friendship and comity to restore some of the feelings bruised from this week."

ELECTIONS AT STAKE

It's hardly surprising that a subject as intensely political as the role of money in elections generates such bitter partisanship.

Campaign finance is a subject on which each one of the 535 members of Congress has strong views. They see their own and their parties' political future at stake in every provision of every proposal to overhaul congressional campaign-finance law. Interest was spurred by the record high costs of 1986 Senate races.

"Is this body going to become the fortress of special interests and the citadel of men of wealth?" asked Byrd, who is deeply distressed by the growing amount of time and energy senators spend raising funds. S. 2 had become for him practically an idée fixe in the 100th Congress.

Although the bill has 52 cosponsors, Democrats have been unable to muster the 60 votes needed to invoke cloture and thus cut off filibusters. Last year the bill was the subject of seven cloture votes—the most

ever made on a single matter. (1987 Weekly Report p. 2252.)

In the course of 1987, Byrd and Boren made modifications in S. 2 designed to pick up additional support—principally by scaling back the proposed system of public financing for Senate campaigns.

In its latest version, the Byrd-Boren bill would provide financial incentives—such as reduced broadcasting and postal rates—for senatorial candidates to abide by specified campaign spending limits. It would provide public funds only to candidates whose opponents do not abide by limits in the bill. It also would impose limits on contributions from PACs.

The cornerstone of the Democratic bill is the proposal for overall campaign spending limits, specified on a state-by-state basis, which S. 2 backers see as the key to curbing sky-rocketing election costs. But such limits are anathema to Republicans, who think a spending cap would institutionalize the Democrats' majorities in Congress. They maintain that challengers are at a disadvantage when they cannot spend freely to overcome the benefits of incumbency.

"To get right down to the nub of it," Simpson said of S. 2, "if this bill passes in its present form, there will never be another Republican majority in the Senate for 40 years."

Democrats saw a glimmer of hope that the impasse could be broken when Simpson indicated on Feb. 17 that Republicans might be willing to discuss spending limits, if Democrats would consider tighter rules on the sort of in-kind campaign contributions—such as labor unions' telephone banks—that are bread and butter to Democratic campaigns.

Seizing that opening, Byrd and Simpson appointed four members from each part to discuss a possible compromise. (Weekly Report p. 385.)

However, it quickly became clear that the group of eight had run aground on familiar shoals: Both sides regarded their positions on overall spending limits as non-negotiable.

One of the negotiators, Nebraska Democrat J. James Exon, called it the "closest thing to a total impasse as I've seen here for a long time."

After negotiaitons stalled, Byrd let it be known he would not let Republicans conduct the kind of "gentlemen's filibuster" against S. 2 they did last year, in which members were not forced to make good in their threats to talk around the clock. True marathon filibusters have been rare in recent years. (1987 Weekly Report p. 2115.)

Byrd said he would force Republicans to hold the floor around the clock beginning the night of Feb. 23, or else push the bill to a vote if the GOP was not there to stop him.

"If there's going to be a filibuster, it can't be a filibuster carried out in the back room," Byrd said. "It has to move to the Senate floor."

The first evening, Republicans responded in kind. They moved repeatedly for quorum calls, then boycotted the floor. That forced Democrats to keep enough members present to maintain the quorum needed for the Senate to remain in session.

It was when the Democrats came up short around midnight that Byrd resorted to seeking the arrest of absent senators and had Packwood carried onto the floor.

That night's events were followed by a day of vitriolic debate about the propriety and legality of the arrest.

Byrd and Simpson finally called a truce late Feb. 24. They agreed to restrict the second all-night debate to the substance of the bill—something Democrats felt was getting short shrift in the Packwood aftermath—and to call off the talkathon the next day at the dinner hour, with a final cloture vote Feb. 26.

The agreement was a retreat from earlier Byrd threats to keep the bill on the floor into the following week and possibly longer. But the strong-arm tactics were wearing thin among some of Byrd's own troops.

By the time the cloture vote was taken, the only question was how far Democrats would fall short of last year's high-water mark, when 53 members supported cloture Sept. 10.

In the end, S. 2 supporters did not pick up a single new ally, but neither did they lose one.

COMPARISONS WITH THE HOUSE

As the controversy wound down, some Republicans warned that the week's events had eroded the Senate's traditional "comity."

"The judgment mistake that Sen. Byrd made is that this is not the House," Packwood said. "He doesn't have a 2-to-1 majority."

Packwood compared the long-term threat of partisan bitterness to the ill will that has lingered among House Republicans since Speaker Jim Wright of Texas in October 1987 used heavy-handed tactics to push through a controversial budget bill. (1987 Weekly Report p. 2653.)

Senate Republicans were particularly infuriated by Byrd's pushing a bill they felt was destined to die.

"People were irate," said one Republican who worked closely on the issue. "A good leader knows when to go to the mat—that's when you have a shot at something."

The clash left Democrats equally embittered by Senate Republicans' behavior, which they believed smacked of the desperation tactics that the Senate GOP has generally left to their badly outnumbered colleagues in the House.

But Byrd said he did not expect the battle to leave lasting scars.

"When this matter is put behind us and we turn to other matters, the work of the Senate will continue," Byrd said. "I've seen these storms come and go."

---

AN ARRESTING CASE, WITH LITTLE PRECEDENT

(By Phil Kuntz)

The Feb. 24 arrest of Sen. Bob Packwood, R-Ore., sent Capitol Hill history buffs scrambling for precedents, but by the end of the week it remained unclear whether Packwood was the first, second, third or fourth senator to be arrested to compel attendance.

"At this point, I really don't care; too many hours have been wasted on this already," snapped Greg Harness, the Senate Library's head reference librarian.

One thing is certain: Packwood was the first senator to be carried into the chamber under arrest.

Article 1, Section 5 of the Constitution says: "Each house . . . may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide."

The Senate's history includes several attempts to address the attendance problem. In 1798, the Senate changed its rules to allow use of the sergeant-at-arms to enforce attendance. Attempts also were made to require absent senators to cover the cost of fetching them.

"The Senate's records for those early days do not reveal any occasion where a senator was either fined or physically compelled to enter the chamber," said Majority Leader Robert C. Byrd, D-W.VA.

The Senate also tried to force attendance by paying its members on a per-day basis, but in 1856, it switched to an annual salary. The result: Sessions got shorter, from an average of 265 days to 203, Byrd said.

In 1864, the Senate tried to shame members into showing up by recording members as "absent" for missed votes. Thirty years later, that method was abandoned, and the phrase "not voting" was used.

Frustrated by failed attempts to adjourn for lack of a quorum, the Senate in 1877 loosened its rules to allow adjournment motion without a quorum.

During the next few decades, there were several unsuccessful attempts by sergeants-at-arms to persuade senators to come to the floor. One sergeant-at-arms was denied entrance to a dinner party that he thought included several members. Another made repeated attempts between 4:20 a.m. and 6:30 a.m. to awaken sleeping senators, to no avail.

One of the first times the Senate approved a motion to order the arrest of absent members was on Feb. 23, 1927, during a debate over the construction of what became the Hoover Dam. The sergeant-at-arms, dispatched with warrants, returned without any senators at 6:30 a.m., reporting a variety of excuses, including one by a senator who said he was just too tired.

The next test came on Nov. 14, 1942, during a debate over a bill to abolish poll taxes. The Senate issued warrants for eight members, seven of them Southerners opposed to the bill. It is unclear, however, how many were actually arrested, if any. "It turns on the definition of arrest," said Senate Historian Richard Baker.

Press accounts of the time said three senators—Burnet Maybank, D-S.C.; Berkeley Bunker, D-Nev.; and Kenneth D. McKellar, D-Tenn.—were arrested.

Bunker, however, insisted Feb. 25 that he was not arrested and walked into the chamber unescorted. Maybank, who died in 1954, said on the floor in 1950 that he and Joseph Lister Hill, D-Ala., had been arrested that day. But the sergeant-at-arms said in a report in the Congressional Record of the day that he could not find Hill. (The report does not say who was arrested.) And press accounts say that Maybank only accepted a ride to the Capitol from a deputy sergeant-at-arms and walked into the chamber on his own. McKellar was taken by car from a nearby hotel by another deputy although he was not told he was under arrest, nor was the warrant actually produced. He, too, walked into the chamber on his own. "He was hotter than a pistol," Bunker recalled.

Until Feb. 24, there were only two other successful motions to arrest absent senators, in 1950 and 1976, but none was arrested either time because the threat itself prompted a quorum.

---

PACKWOOD ARRESTED, CARRIED INTO CHAMBER

An arcane tool of Senate discipline was hauled out in the wee hours of Feb. 24, in an incident that proved to be the turning point of a week's acrimonious debate over campaign-finance legislation (S. 2).

When the episode was over, Oregon Republican Bob Packwood had been arrested, had reinjured a broken finger and had been physically carried onto the Senate floor at 1:19 in the morning.

Touching off the skirmish was Majority Leader Robert C. Byrd's decision to resurrect the Senate's little-known power, last wielded in 1942, to call for the arrest of absent members to bring them to the floor. (Campaign finance, p. 485; history, p. 486.)

Packwood's finger was not the only casualty. Also lost in the scuffle was the last shred of hope that a bipartisan approach on campaign-finance changes could emerge from the debate. And the incident shifted the focus of the week's debate from the substance of the bill to partisan pyrotechnics.

Republicans warned that the incident could leave lasting scars. "Remember Packwood" will become a GOP rallying cry, the Oregon Republican said.

But Byrd, D-W.Va., called the flap over Packwood a "sideshow" designed to divert public attention from Republicans' opposition to controlling the costs of congressional campaigns.

STALKING THE HALLWAYS

The escapade began the first night of the Senate's three-day non-stop session on S. 2. Byrd attempted to wear down the opposition by forcing them to talk all night.

Republicans responded with a clever maneuver that allowed them, in effect, to sustain a midnight filibuster without showing up. Only one Republican remained stationed on the floor to keep watch over the proceedings. The GOP tactic was to force a series of quorum calls and then boycott the votes, forcing the Democrats to come up with the 51 bodies needed to establish a quorum and keep the Senate in session.

After a series of procedural votes in which a declining number of Republicans participated, Democrats after midnight found themselves one vote short of a quorum. They then approved, 45-3, Byrd's motion to request the sergeant-at-arms, Henry K. Giugni, to arrest absent senators and bring them to the floor. (Vote 23, p. 546.)

Republicans met quickly in the cloakroom off the Senate floor to plot strategy, and then scattered.

Giugni gathered a posse of Capitol police, armed them with arrest warrants, and began combing the halls, hideaways and other habitats of Capitol Hill for delinquent senators. The sight of the approaching officers at one point sent Steve Symms, R-Idaho, scampering out of sight. Giugni and company, on a tip from a Capitol cleaning woman, finally tracked Packwood down in his office, where the senator had bolted one door and blocked the other with a heavy chair.

"I thought I was safe," Packwood said, telling the story with relish at a press conference the next afternoon.

Giugni unbolted the door with a pass key, and when Packwood tried to hold it shut with his shoulder, forced it open. In the process, Packwood reinjured a finger he had broken a few weeks earlier.

"Frankly, I thought there was a miscommunication," Giugni deadpanned when he joined Packwood at the press conference. "I was trying to help him open the door."

Packwood agreed to walk over to the Senate chamber, but refused to go inside under his own steam. Two of Giugni's officers lifted Packwood carefully and carried him feet-first to the Senate floor.

"Here," Packwood said, at last establishing the quorum of 51.

"BANANA REPUBLIC" TACTICS

Packwood was jocular at his post-mortem press conference, but other Republicans expressed a deep bitterness over the incident—much of it directed at Byrd—that poisoned the rest of the week's debate.

"Tyranny of the majority leader," Arlen Specter, R-Pa., called it.

Utah Republican Orrin G. Hatch said the Democrats were trying to turn the Senate into a "banana republic."

They questioned the constitutionality of the arrests and of using physical compulsion. Specter tried Feb. 25 to force Senate reconsideration of the vote to arrest absent senators, but his move was killed on a 47-45 vote, largely along party lines. (Vote 29, p. 547)

Byrd was affronted by GOP criticism of his tactics and responded at length. Accusing the Republicans of "a calculated effort to obstruct this Senate," Byrd said in an agitated floor speech, "I had no doubt where my duty lay."

"I don't have any regret whatsoever in what I did. I only regret that I had to do it."

---

BYRD-WATCHING INTENSIFIES IN SENATE

Will he or won't he? That's what every Senate Democrat wants to know for sure about whether Robert C. Byrd will seek another term as Senate majority leader after the 1988 elections.

The West Virginia Democrat, who survived challenges the last two times he ran for majority leader, had been widely expected to announce his plans this month.

Byrd's continuing silence has frustrated those who aspire to succeed him, but Senate sources say the leading candidates intensified their campaigning significantly in the last two weeks. That activity was part of the background against which Byrd followed a controversial hardball strategy for pushing campaign-finance legislation (S. 2) the week of Feb. 22. (Campaign finance, p. 485)

George J. Mitchell, D-Maine, has been telling members he wants the job if Byrd doesn't. So has Daniel K. Inouye of Hawaii, who reportedly has met with almost all his Democratic colleagues in the last two weeks. J. Bennett Johnston, the Louisiana Democrat who ran an abortive race against Byrd in 1986, said he also had stepped up his unofficial campaign this month.

"I'm talking to people with more intensity," Johnston said. "We don't yet know who's in the race yet. But now's the right time."

In talking to colleagues, Johnston said, "I'm saying I'm in the race. "I've assumed all along Byrd is not running, and I'm running on that assumption."

When Johnston ran for majority leader, there were widespread reports—never confirmed—that Byrd had blunted opposition by telling members this would be his last term as majority leader. Byrd is in line to succeed the retiring John C. Stennis, D-Miss., as chairman of the powerful Appropriations Committee and as president pro tempore of the Senate.

Byrd, characteristically, is playing things close to his vest. Some Senate Democrats are questioning the conventional wisdom that Byrd is withholding an announcement to forestall becoming a lame duck. A longtime adviser said many Democrats had approached Byrd to volunteer support if he decided to seek re-election as leader.

"I would've guessed a month ago that the chances were 75-25 that Byrd would step down," J. James Exon, D-Neb., said Feb. 24. "I would guess today the odds have been reversed: there's a 75 percent chance he'll stay."

But with the informal campaign to succeed Byrd already so far along, some members say trouble lies ahead if he tries to keep the job. "It would cause incredible discontent," said a Democrat who is supporting Mitchell.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Thank you, Mr. President.

We have been treated today and over the last week with a good many references to history, both recent and distant, in terms of the U.S. Senate. I have just finished reading a fascinating book, a biography of three Senators, and I recommend it to all of my colleagues. It is called "The Great Triumvirate." It is the story of Clay, Calhoun, and Webster. It is the story of what was known as the golden age of the Senate.

That was a time of great passions, perhaps greater passions than any of us have today, for the times almost demanded it. That was a time of great debates and a time of raucous disagreements. The Senate was not always a place of calm and peace.

I was struck by several things in reading that history; first, that most of us are familiar, especially this year, with our constitutional forbearers and the Constitution they wrote just 200 years ago. And we are even familiar with the early days of the Republic and how those constitutional fathers brought this Nation into existence. We seldom really think about, nor do we read about, that second generation of Americans, those who served in this Congress and in this body during the early stages of the 19th century. They were the ones who put flesh on the constitutional skeleton. They were the ones who, as second generation public servants, had to decide just what their constitutional fathers had in mind as those forbearers finally drifted away.

I was struck in reading the book by the nature of debate, by the fact that not this Senate Chamber but the old Chamber down the hall was packed during debates of importance. Not only packed with Senators and with those watching from the very narrow and small gallery but by the wives of the Members who came in and the Senators, being gentlemen, would stand and let their wives sit in their own seats, with most Senators standing during the course of debate. Lobbyists were on the floor looking from all sides. It was a scene of immense excitement because it was so crowded and every orator had an audience.

I came to the Senate 5 years ago awed and challenged by what I thought I would find. I have been saddened much of the time by empty debate, by the fact that we too often are speaking to empty chairs and an empty Chamber. Seldom, if ever, even on the most important of issues, do we attract a sufficient audience to even come close to making a quorum. There

are flashes occasionally. In fact, I was interested last night, fairly late in the evening, when an amendment was brought forward by the Senator from Ohio [Mr. METZENBAUM] an issue which he thought would gain almost unanimous support. Fortunately, there were maybe 30 Senators or 35 Senators in the Chamber, enough of an audience to listen to debate, even though the debate was limited to 20 minutes, 10 on each side. I thought Senator DODD from Connecticut in 5 or 6 minutes set forth the case against that particular proposition. I am confident he changed votes on the floor, as true debate ought to do or is aimed at doing. And that resolution which was designed to have almost unanimous support passed by 3 votes, 48 to 45. I suspect that if all Senators had been in attendance during that debate, the resolution would not have passed at all.

I think it is time to find ways in which we can encourage participation. Participation comes in two ways: by those who are debating, those who are speaking, and by those who are listening and understanding and learning and occasionally opposing what is being said.

I have been excited by some of the changes the majority leader has instituted this year. He has given us an opportunity to regularize our schedules by establishing a 3-week-on-and-1-week-off schedule, which we can look forward to for the entire year. But, I am afraid that events of the last week have shattered many of those illusions of change.

Never in my 63 years have I ever had an arrest warrant issued. In fact, because it was unique, I asked if I could have a copy so that I could put it in my scrapbook and have it available to show my children and grandchildren about my arrest—or, at least, a warrant for my arrest. I find that they are, somehow, not available.

Well, that is a minor thought. But I thought more and more about the actions taken last week and what the consequences or potential consequences might be. I was not involved in the decisions to not come or not respond or not answer a quorum call. I was home asleep, prepared to come at any time there was business to be done on the floor. I live just two blocks away from this Chamber and can get dressed and get here in less than 10 minutes. Of course, because of the strategy that was chosen during that night, they did not call me.

I thought to myself, what if they felt that I had turned out to be the nearest and most available and the Sergeant at Arms had come knocking on my door? What then?

Under this arrest warrant for Senators, does he have the right to enter my home? Does he have the right to search? Does he have the right to seize me from my bed, for Heaven's sake, in order to return me to the Senate floor? Where does that right begin and where does that right stop? Where does the Constitution begin and where does the Constitution stop? I am afraid that we are playing a giant game of "gotcha," to see who can get the other side.

It is really not the rules or distortion of rules in the Senate which is at stake. It is pure comity. It is people understanding one another. It is recognizing that there is a difference between the passion and strength of ideas and issues, as separated from the respect we must hold for each other as individuals.

Let me speak about some other elements that I hope may evolve out of this event and that may take us forward, rather than backward.

This Senator, I do not believe, under the present circumstances, would agree with the Senator from Alaska in his suggestion that there be a quorum call at the beginning of each daily session, that we be here at the time of the morning prayer. That may be a good idea, but several other things need to be done as well.

First, the morning rollcalls, where the Sergeant at Arms is asked to bring in the absent Members, is unnecessary, demeaning, and distracting, and I hope the practice ceases, and ceases soon.

I have talked to a number of colleagues during the past few days, and the recent requirements for a morning rollcall, for absolutely no purpose, has been to disrupt committee meetings. We were engaged in a very important markup in the Committee on Energy and Natural Resources. We all had to quit, come down here, respond to a rollcall, just to prove that, somehow, we were here and working. It took more than a half-hour to regain the quorum and to get us back into business so that we could get on with the business. That has happened in committee after committee in the Senate.

Frankly, I resent the continual suggestion, represented by those unnecessary rollcalls, that, somehow, I am not at work or that I am not in town or that it is necessary to run every Senator into this Chamber. For what purpose?

Division and warfare have occurred during the course of the last week. In all wars and in all divisions, peace must come. I hope that peace will come sooner rather than later.

We have a good start in annual scheduling which the majority leader has instituted. I think the requirement that we meet the rollcalls during the 15 minutes for which they are called is an appropriate thing to do. It is interesting how readily we can all find our way to the Chamber in 15 minutes, now that we know that is the time to be here.

I would hope, and offer as a modest suggestion, that we could expand some of what we do in making our jobs easier. We should attempt to meet with various committee chairmen to try to establish a full 5-day working week for the regular meetings of committees, and to establish those committee meeting times so that they minimize the conflict of Senators forever having to choose between one committee and another.

This Senator has a particular problem because of his major committees meeting at precisely the same time on the same days, and I always have to make a choice as to which committee I meet with.

I would hope we could begin our sessions at a regular time every day, with the recognition that there may well be some days we must veer away from that. But if we knew more precisely and regularly when we were to come in, and if there was an announcement that we would not stay late at night, except on a specific night of the week, as a regular course, then all could plan for their family activities, plan their workday.

I recognize quite clearly that the rhythm and the work of the Senate do not make it easy to get into fixed or set schedules. But we can aim at regularity, knowing that occasionally we must go away from it.

These and other actions are not dramatic, but I think that collectively they could change dramatically the way in which we do business. More important, they could change dramatically the comity and the feelings we have for one another.

Most of all, I think it is necessary for each of us to give up something of our own individual course of action for the common good.

I think it is time that all of us stop the demand for incessant and unnecessary rollcalls whose only purpose is to try to politically "get" somebody else or some others. It is seldom necessary, really, to have a rollcall when the end result is 96 to 0 or 90 to 2, or a vote that really has little meaning.

I think it is time that we all agreed to quit abusing the concept of holds on bills and holds on appointments, instead of using the filibuster as it was honestly meant to be used.

I would hope that maybe, with all of this, we could regularize a little bit more of what we do and emphasize our committee activities in the morning. Then, if Senators recognize that in the late afternoons we could have an amendment, particularly an amendment of consequence or an amendment we know would be controversial, an amendment that ought to be debated, and maybe, if we understood that each of us was going to aim at that time to have those amendments in front of us, we might even attract our

colleagues back to the floor. We might even just voluntarily recreate the kind of live debate and exchange that would elicit information and would give us help in the votes we ultimately cast.

That I think is more important than any of the rules changes or the declaration of intent on an arrest warrant or all of the other things we are talking about today.

The real importance is to find a happy medium if we can. A happy medium between the old tyranny of yesterday where committee chairmen had autocratic power and now, where we have moved clearly over to the other side of the spectrum where we have the chaos of 100 different fiefdoms, each one quick to speak up, each one slow to compromise.

I think in many of our actions we ought to let the leaders lead. I was struck last night again by another scene. The two leaders, the majority and minority leaders, had gotten together on the schedule for today's activities. When the two of them have worked together on procedure like that and laid out the next day in an effort to give us some regularity we ought not to stand up and threaten to object and take more time in asking questions than could be saved by any alternative solution.

I would hope that we would seldom find it necessary to do that, that when leaders get together on procedures they ought not to be repeatedly challenged.

I hope that this incident will not create longstanding rancor. It should not, because we, each of us, have too much respect for our fellow colleagues. But I hope that it may help all realize the importance of mutual respect which far transcends anything we can do in the change, modernization or becoming more explicit in how we deal with rules.

I yield the floor.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Missouri.

Mr. DANFORTH. Madam President, consider what we are doing today on the floor of the U.S. Senate.

We are debating suggested rules changes on the subject of when Members of the Senate can arrest other Members of the Senate. That is the debate. We are debating four suggested changes of the rules on the circumstances under which Members of the U.S. Senate can be arrested.

I support these suggested rules changes. They seem to be minimal to me. But I do not think that these changes cure whatever ails the Senate. That is to say, I do not think that a rules change saying that we cannot be arrested after 11 o'clock at night is going to fix the Senate.

If we get to the point where there is some solace in being arrested at 10:59, I do not think we have accomplished very much.

Sitting in my office a few minutes ago, watching on TV what was going on, on the floor of the Senate, I was struck by the scholarly presentations of the majority leader and the Senator from Alaska on the question of exactly what the precedents of the Senate were with respect to instructing the Sergeant at Arms to compel attendance or to arrest Senators. I suppose that is very interesting to historians.

It just seems to me that if we have reached the point where what we are debating is technical rules changes on the circumstances of an arrest, or the history of what comes first, an instruction or an arrest, then we have not really solved any problems.

I think that we tend to put such great stock in our rules and in our precedents that sometimes we feel that the rules alone are going to save us.

I am in no way diminishing the importance of the rules of the Senate. What I am suggesting is that the rules are not enough. The rules are not enough to make this place function. I cannot count the number of filibusters that I have witnessed in the time that I have served in the U.S. Senate. I do not believe that any of them have been terminated simply becaue we have exhausted everything under the rules.

Therefore, I think that exhausting the rules, sticking with the details of the rules, has a limited consequence.

I remember watching the debate a week ago when the majority leader and the acting minority leader stood on the floor and talked about what was in store for the ensuing night and how everybody was going to exercise every right that he had according to the rules. The majority leader said that he understood that the rules could be utilized by the minority, and vice versa. I thought when I watched that we are in for real trouble around here because it is clear that the rules permit us to do all kinds of things. The rules permit us to delay things for endless periods of time and to stay here all night and to arrest each other, and all of these things are provided under the rules and if all we do is to exhaust what is permitted under the rules then we create real havoc.

So I think that these four suggested changes are fine, but I do not think that they are going to solve any problems.

It seems to me that what happened last week was brought about because we had a very partisan issue. At least it was perceived as a partisan issue. Republicans felt that the campaign reform bill was a threat to our party, and we were not about to just give up on it.

Then the majority leader announced that we were going to start meeting around the clock and then the Republicans got their backs up and said if we are going to be here all night they are going to be here all night, and it went back and forth.

It was kind of a bringing to a head a sense of partisanship, a reaching of an extreme status of partisanship.

But it just seems to me that we are going to search for some ways in this body, not to end partisanship—we are Republicans or Democrats—but to figure out ways in which we can live together and not torture each other or humiliate each other. All-night sessions, if they are unnecessary, are a form of torture. Arrest warrants are a form of humiliation.

We are going to have to figure out ways to get along short of physical torture and short of personal humiliation.

I know that Senator BOREN has thought about this at some length, not in the context of what went on last week, but he has pointed out to me some things that are very obvious that they are worth flagging.

On Tuesdays, the Republicans meet in room S-211 and the Democrats meet in S-207; party caucuses, every Tuesday. On Wednesdays, I do not know what the Democrats do, but I know there are a couple of luncheon groups for Republican Senators only, and we get together at lunch on Wednesdays.

On other days, any day, when you want to go down to the Senators' dining room and have a bite to eat, you either sit at the Republican table or you sit at the Democratic table, one or the other.

Maybe what we should be doing, instead of tightening the precise rules under which Senators can arrest one another, is to give some thought as to ways of creating more bridges so that the kind of hard feeling—and it was very hard feeling that existed last week—is at least minimized. Maybe we should eat at separate tables downstairs. Maybe there should be some systematic way of literally breaking bread together, Republicans and Democrats.

Some of the wonderful and very infrequent moments in the Senate have been when we have gotten together for dinner. As I remember, one of the few, maybe the only times we have done it was 2 years ago when half a dozen or so Senators were retiring and the leadership gave a dinner party in the Senate caucus room for retiring Senators. It was a wonderful time of Republicans and Democrats getting together in a more social situation.

Maybe we should have some weekend gatherings. Republicans go down to Williamsburg, VA. Democrats go down to Williamsburg, VA. Maybe there should be some opportunities for us to do some things together.

Perhaps the leaders should get together socially from time to time—maybe they could even have a Budweiser together—not for the sake of necessarily talking about what is on the Senate agenda, but just attempting to build bridges.

I do not think that the problem of last week is going to be solved by rules changes, although I think that these four changes are fine. I think that what we need is the word that was used by Senator EVANS a few minutes ago—"comity"; mutual respect, mutual tolerance; trying to look out into the future and realize in advance what is possible and what is not possible, what can be legislated and what cannot be legislated.

I can remember so often Senator Baker, when he was the majority leader, saying that he just could not figure out how to push the Senate any further or any faster than it wanted to be pushed. That is a tough recognition. I would not have the patience to come to that recognition, I do not think; very, very tough. But maybe a sharing of that kind of sentiment is necessary.

So, again, Madam President, I would suggest that rules changes are fine, but maybe there can be some consistent way of giving some thought as to how we could move beyond rules changes, how we can learn to live together in the Senate for the good of the country.

The PRESIDING OFFICER. Who seeks recognition? If no other Senator seeks recognition, time will be divided equally.

Mr. BYRD. Madam President, the agreement was the Republicans would control the first 3 hours and 45 minutes, and then I would take 15 minutes or 30 minutes from my hour, after which Mr. SPECTER would take 15 minutes, and then I would take the remainder of my hour. So the first 3 hours and 45 minutes, according to the understanding between the distinguished Senator from Wyoming, Mr. SIMPSON, and myself, the first 3 hours and 45 minutes are under the control of the Republicans. So if there is a quorum call, it should come out of their time at this point.

The PRESIDING OFFICER. The majority leader is correct.

Mr. BYRD. Madam President, I yield myself 1 minute.

How much time remains on both sides?

The PRESIDING OFFICER. The Chair will advise the majority leader that the Republican side has 54 minutes and the Democratic side has 59 minutes.

Mr. BYRD. I thank the Chair.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Madam President, I have listened with interest to those who have spoken before me and would agree, in most respects, this is not particularly a time to launch spears at the majority leader or at the Democratic Party or anything else; but to try to explain what a serious event occurred last week, an event that I think is perhaps lost in its pain that it caused and in the change in mood which continues since that moment.

I know that many Members, friends and colleagues of mine on the other side, are wholly unaware of the depth of feeling that most Senators on this side feel. I do not know as anybody who has not experienced it can quite understand what it is like to have police, agents of the Sergeant at Arms, walking outside your door and wondering whether you ought to keep the light on or not.

It sounds like the kind of thing over which many in America might snicker. I think perhaps some on the other side did, viewing this as more of a political lark than a serious exercise. But Madam President, that is not what America is all about and certainly not what the Senate is all about.

You should not have to make the decision as to whether to keep the light on in the middle of the night in your office, as to whether the lock on your door would be breached or not. Those on either side of me downstairs reacted in different ways.

I think it is important to keep in mind that the reason there was no quorum was that the majority could not muster a quorum; the thing which gives them the leadership was not available to the leadershp to call upon. To then issue warrants only to the minority side and to destroy those warrants after the quorum had been established. I think causes great and serious pain. And it ought to.

I think the depth of feeling has been lost on many Members on the other side. I repeat that. I think there were three Members of the majority and two—including two members of the Judiciary Committee who voted against this motion. I think another time, calmer heads might well have prevailed. Consequences of it are legendary distrust of the circumstances under which we serve and the oath that we have offered, not only to the people of our State but to the people of our Nation. The whole consequence, and the whole concept of the Senate of the United States is the embodied concept of the system of government which exists in America.

The reason that I, as a Senator from a State with 450,000 inhabitants, can share my service with the acting minority leader, also of that State with the same 450,000 inhabitants, with the Senators from California or the Senators from New York or the Senators from Texas or the Senators from Florida, in the same number, is to protect us from the concept and to protect our constituents from the concept of the tyranny of a majority of one.

The Senate's rules embodied that concept. The whole business of the United States is that there is no minority without protection. And yet last week we saw that minority stripped of its protection and its rights under the rule.

I guess my point here this afternoon is not so much to care about how changes in the rules for the arrest of Senators might take place. It would be my wish that there was no rule for the arrest of Senators. I would not have liked to see exercise it while we were in the majority. I did not like to see it exercised last week, as we are in the minority.

I think what we are looking at is somehow or another the means by which to make decisions in this body when the whole Nation's interest is involved. And the whole Nation's interest was not involved the other night in a bill which was up to which we could make no amendment because the tree was filled; to a majority whose ears were shut because they were not present enough to establish a quorum. Somehow or another that misses the concept that America's interests were part and parcel of those actions.

So it is not now a question of reacting in rage. It is not now a question of, indeed, a change in the rules. It is now a question of change in attitude.

I cannot remember a time in my 10 years in the Senate of the United States, now nearly 12, 11 going on 12, in which the Senate and indeed the Congress and indeed the Capitol is operating more on political autopilot and less in behalf and in consequence of the direct interests of the country.

Some doing the bidding of big labor, some doing the bidding of a minority of liberals, who have controlled the caucus of the Democratic Party in the House, some on our side making people jump through hoops, some on the Democratic side making people jump through hoops. This is not the purpose for which the Founding Fathers dreamed of the Senate.

It was to be one of the world's great debating societies. That is one of the names which we call ourselves. The problem is that since the advent of television and a number of other things, that we rarely debate. We now come down to give speeches on television. One has but to look at the attendance in the Chamber this afternoon to recognize that this is no longer a debate but a sequence of speeches. I think the majority leader would agree with me that one of the things lacking is debate. Debate was not part and parcel of what we were up to the other night in the continuing saga of S. 2, because there were no minds to change, there was no place to go.

There was but for us to participate in our own funeral.

The majority, not being able to muster its own majority, sent warrants out to arrest the minority so that we might continue in what we viewed as our own demise. Fortunately, it was a scene viewed mostly by America's insomniacs, those who were perhaps not listening to talk shows and things in the middle of the night. And, while we view all of this as something other than a serious matter, I think it is important to go back and view it and take it seriously and understand fundamentally how deeply and badly hurt was comity and the consequences to life in the Senate.

I think it is interesting to note that in 1988 we have been celebrating the 200th anniversary of the ratification of the Constitution; large celebrations all over America. And well they ought to be, as the most incredible political document in the history of world politics.

My colleague from Alaska has discussed some aspects of the Senate history which reflect on last week's incident and the history of why we formed this Union has some relevance to what happened last week.

I think it is wise to remember that some 200 years ago these American Colonies, which then formed the basis of what is now our 50 States, were being terrorized by an English king and a Parliament, and the reason common law was being thrown aside by a Parliament seeking to exercise extraordinary power over the Colonies.

The Parliament approved what was called writs of assistance, which permitted the English authorities to enter any home or office without restraint. A man named James Otis argued on behalf of all Americans that the writs were against the fundamental principles of law. So while the absolute powers of the star Chamber had been banned in England, such abuse of power was still applied in the Colonies and was one of the reasons why we set about becoming our own Nation through a revolutionary war, which is still celebrated.

Parliament passed the declaratory act. It was a statute asserting the power of the Parliament to enact any laws to bind us—that is, the American Colonies—in all cases whatsoever. Thomas Jefferson and John Dickenson wrote in the declaration about the causes and necessity of taking up arms. The question was, what was to defend us against such an enormous and unlimited power?

We faced a question not unlike that last week. A group of Senators, not a quorum of the Senate of the United States, not even a unanimous vote of the Senators remaining of the 45 in the majority party that were still here, sent out warrants for the arrest of us.

The result of the declaratory act was the glorious revolution, whereby we asserted certain inalienable rights, and those rights still exist. They cannot be repealed by a minority of the majority party. And yet, that is precisely what happened last week. To what end?

Were America's shores threatened? Were America's people in the depths of famine? Were America's people on the edge of catastrophe of disease? Was fire sweeping our land? Was the Soviet Union preparing for war? Was recession imminent? Was any catastrophe of any dimension on the horizon that could not wait until the morning? The answer is precisely no.

Now we see the dimension of the actions which the majority instigated. I do not think the majority saw it then and, in many respects, I do not think the majority sees it now as that kind of an action. Yet, precisely that is the way it is viewed by those of us against whom that action was perpetrated.

So while the Rules Committee may contemplate the suggestions of the Armstrong amendment or the suggestions of the distinguished Senator from Pennsylvania, more important is to ask ourselves again who we are, what we are, and why we do what we do, and is a triumph of politics a sufficient cause and reason to engage in actions so destructive of the concept of protection of the rights of the minority which occurred last week?

I think the answer, Mr. President, is no. I think if Senators were to think about the consequences of an action so drastic, as that which was perpetrated last week, I know and can guarantee that there would be no set of circumstances under which this Senator would vote for the arrest of any other Senator under any other circumstances but for pending national crisis and violence. It is certainly not to satisfy a political whim or political purpose, not a whim, in the middle of the night.

That is and that becomes the depth, the dimension, and the circumference of the hurt that was done to the Senate last week; a hurt, which depth, dimension, and circumference, will take many years to breach; a hurt which needs to be understood by those in the majority party, who I do not think set out to create and consciously cause a hurt of that dimension, but, nevertheless, whose thoughtless actions in the middle of the night did just that.

Madam President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, how much time remains on the Republican side?

The PRESIDING OFFICER. The Republican side has 33 minutes.

Mr. SPECTER. And that is out of the 4 hours which was allocated to this side of the aisle?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Madam President, there have been, up to the present time, according to my calculation, 11 Senators who have spoken from this side of the aisle and quite a number of other Senators who have appeared. Other speakers were in process, but they were not able to speak at that time.

We have 8 other Senators who have requested time but who have not appeared as of this moment.

I believe in light of the fact that we have used approximately 3½ hours of our time, and 15 minutes of the time has been reserved after the majority leader uses a portion of his time, at this time, in the absence of any other Republican Senators, we would yield back all but 15 minutes of our time, in which it would then arise that the majority leader can exercise his time.

The PRESIDING OFFICER. The time has been yielded back.

Mr. BYRD. Madam President, I thank the distinguished Senator from Pennsylvania for not utilizing the 15 or 16 minutes that remain on his side of the aisle.

I have listened with great interest to the speeches that have been made. I have heard some thoughtful proposals made, and I have heard some, in my judgment, which were not quite so thoughtful; some that were reasonable and some that, in my humble opinion, were not so reasonable. But be that as it may, the Senators had their say. They had a right to speak their opinion.

Madam President, 199 years ago tomorrow, the Senate of the United States, under the Constitution, was to have met to organize itself as a legislative body—199 years ago tomorrow, on March 4, 1789.

There were only eight Members present, and so there was a quorum lacking. The Senate had not organized itself, and all that those Senators could do was to wait until a quorum assembled. And so they waited a week and then sent out a letter to the other Senators who had been chosen and urged them to attend. Another week went by and they sent still another letter.

Finally, Madam President, 1 month and 2 days later, on April 6, which was a Monday in 1789, a quorum finally assembled itself and organized the Senate. That same day there was a committee of five, lawyers by the way, appointed to recommend rules for the orderly procedure of the Senate. Those five lawyers met and, on April 16, 10 days later, reported back 19 rules which were "observed," or in our modern parlance, I would say, were

adopted. Two days later, a 20th rule was subjoined to those first 19 rules.

Among those 19 rules was the 19th rule which provided that Senators should not absent themselves from the services of the Senate without leave of the Senate. That was rule XIX among the first 19 rules of the Senate. That rule today is carried over into our current rules and appears in rule VI of the rules of the Senate today: "No Senator shall absent himself from the services of the Senate without leave."

And so since April 6, 1789, this Senate has been a continuous body. There has never been a new Senate. This Senate is a continuing body and it has time-tested rules by which it operates.

We have heard a great deal said about the events of last week, and, particularly, the arrest warrants that went out, and all that. Many suggestions for improvements, made heretofore and today, are certainly worthy of consideration.

The quality of our life, and our work, in the Senate, as important a concern as it is, is a recurring theme.

Madam President, will the Chair let me know when I have consumed 15 minutes.

The PRESIDING OFFICER. The Chair certainly will.

Mr. BYRD. It is a theme in which I am particularly interested. I would like to take a moment today to reflect on some of the problems that the Senate as an institution faces and how we both individually and collectively, might go about resolving them. My goal is to improve the quality of the Senate's work. We hear a lot about the "quality of life" in the Senate. I suppose the coal miners in West Virginia, the farmers in Iowa, and the sailor on the high seas could all talk about the quality of life and with good reason. I, too, am interested in the quality of life, but, more importantly, I am interested in the quality of work here. If we improve the quality of our work here, I think we will have a sense of feeling that the quality of life has been also improved.

So my goal is to improve the quality of the Senate's work and enhance the Senate's ability to function as a deliberative body while retaining those elements that contribute to its unique and fundamental duties.

The efforts to improve the Senate have often borne fruit.

Witness the major restructuring of the Senate committee system in 1977 and the rules changes on filibusters in 1979 and 1986. Other changes, notably the televising of Senate sessions beginning in May 1986, have contributed to a resurrection of the Senate's role as a forum for debate on significant public issues. The coming deliberation on the INF Treaty will highlight the important place that the Senate occupies in the national exchange of ideas.

Yet, for all the improvements that have been made in the operation of the Senate, the body frequently finds itself beset by a host of problems—some perceived, some real—that detract from the ability of this body and its Members to do the public's work.

We are fortunate to have a small group of Senators, led by Senator DAVID PRYOR on this side of the aisle and by a similar group from the other side of the aisle, that is working with Mr. PRYOR, examining some aspects of the Senate's operation with an eye to improving its procedures. The Rules Committee, under the chairmanship of Mr. FORD, is, likewise, constantly reviewing procedural changes that would help to streamline the Senate and at this particular time is reviewing some particular changes that have been recommended by Senator PRYOR and me and others. I am hopeful that these efforts will lead to improvements in the quality of work and of life in the Senate.

As we look at our procedures, it is important to keep in mind the unique qualities of the Senate that are integral to the balance of constitutional powers in our Government. The Senate is not a city council. It is not a State legislature. It is not the House of Representatives. It is a body in which the will of the majority must remain tempered by the rights of the minority, and in which both have responsibilities. It is a body in which day-to-day efficiency must often be sacrificed to preclude a tyranny of the majority. And keep in mind that there can also be a tyranny of the minority.

There are times when the delays and inaction here are not the result of strongly held beliefs, but of more parochial concerns. Chief among these is what I have referred to as the money chase. The average Senate campaign cost $3 million in the last election. The most expensive race cost $11 million for each candidate.

The situation has reached the point that a Senator must raise some $10,000 per week, every week, beginning the day after he is elected, to finance the average reelection campaign 6 years hence. And those campaigns are getting more expensive, even as we speak. With the escalation in campaign costs, Senators are forced to spend more of their time away from the Senate floor in pursuit of contributions.

It is interesting to me that some Senators today have said the Senate last week was discussing a matter that was not of great national interest and that it was a partisan matter, and yet, they continued to maintain that we must improve the quality of life in the Senate.

Somebody is mixed up in their thinking. The matter before the Senate last week was of great national interest and, in addition to that, was of importance to "the quality of life," a term that is used so much in the Senate. Both were involved in S. 2. Those who say, on the one hand, that S. 2 was not a matter of great national interest but, oh, we have to improve the quality of life in the Senate, should sit down and take a look at what they have said. S. 2 is important to the Nation and would have a great impact on "quality of life in the Senate."

What we were talking about in that legislation, S. 2, was the escalation in campaign costs. Senators are forced to spend, as I have said time and time before, days, weekends away from the Senate floor in pursuit of contributions. That is time away from their legislative duties and responsibilities.

These absences detract significantly from the ability of the Senate to get its work done in an orderly, efficient manner. I know of no greater blow that could be struck to improve the operation of the Senate, to improve the "quality of life" in the Senate, than to pass campaign finance reform legislation and reduce the need for Senators to be away from their duties here.

Not all changes to facilitate the operation of the Senate require new legislation, or even rules changes. I am reminded of the cartoon character Pogo, who upon discovering the true source of his plight exclaims, "We have met the enemy, and they are us." That situation, unfortunately, bears a strong resemblance to that in which the Senate finds itself so often.

The dissatisfaction toward the Senate and its operation is often directed against rules and procedures and organization—as well as against the majority leader, which is all right. "I would rather be envied than pitied" someone else had said. In so many cases, it is not the rules or the procedures or the organization that is at the root cause, Madam President. "The fault, dear Brutus, is not in our stars, but in ourselves." Of course, that does not mean that there are not improvements in the procedures that can be desired.

One start is to begin enforcing our existing rules. We are already proceeding to do that. Rollcall votes are now a strict 15-minute affair. Some Senators have been surprised at that and there were a few who missed votes but now that all Senators are on notice that the time limit is being enforced, there will be less delay while we await the attendance of a tardy Senator.

There has also been a frequent problem with slow starts on legislation.

There have been a good many references to "bedcheck votes." Well, when a bill is called up the leaders and the managers are on the floor. That is why we have to have "bedcheck" votes sometimes. I have come to the floor on

many occasions, seen the managers and ranking managers sit here for hours waiting on Senators to come to call up their amendments. So when a bill is called up the managers are on the floor but there are no Senators present to offer amendments.

We have the "bed check" votes. They require Senators to come to the floor early for the vote so that Members will be available, and floor action on legislation can begin expeditiously. I believe that these votes have assisted the managers of the bills to start action on the bills sooner, and therefore help to complete the action sooner.

The PRESIDING OFFICER. The leader has used 15 minutes.

Mr. BYRD. I thank the Chair.

I shall proceed for an additional 5 minutes and I ask the Chair to inform me when I have used 5 minutes.

In our search for solutions we have tended to encumber the Senate with additional rules and "expedited" procedures, all done in the name of causes, worthy or otherwise, and with the intent of speeding consideration of those issues. It is ironic that too often those new procedures serve merely to add further delays and increase the opportunities to resurrect issues over and over again. In effect, Mr. President, we have sought refuge from painful or difficult decisions in parliamentary procedures. We have substituted activity for achievement. Reversing this trend may require less in the way of rules changes than changes in our individual behavior.

Of course, that does not mean that there are not improvements in our procedures that can be made. One start is to begin enforcing our existing rules. We are already proceeding to do that. Rollcall votes are now a strict 15-minute affair. Some Senators have been surprised at that, and there were a few missed votes. But now that all Senators are on notice that the time limit will be strictly enforced, there will be less delay while we await the attendance of a tardy Senator.

There has also been a frequent problem with slow starts on legislation. When a bill is called up, the leaders and the managers are on the floor, but there are no Senators present to offer amendments. That requires our respective cloakrooms to repeatedly contact Senators' offices individually—a time consuming process, and one that should be unnecessary.

Last year, I began to schedule a floor vote early in the day so that Members would be available and floor action on legislation could begin expeditiously. I believe that these votes have assisted the managers of bills to start action on their bills sooner, and therefore helped complete that action sooner.

The schedule this year is another change that should facilitate Senate operation. Given the long distances that some Senators must travel to return to their States, it has often been difficult to reconcile travel time and airline schedules with the need for attendance so that the Senate can proceed on legislation. This frequently resulted in the Senate not starting work on legislation until Tuesday afternoon and concluding its week with the last vote early Friday morning, or, sometimes, Thursday evening. Late nights became commonplace and the legislative schedule became backlogged, especially when controversial matters were considered. This year with 3 solid weeks of work and then a week for Members to travel to their States, it should be possible to maximize the time Senators can spend with their families and constituents without detracting from the ability of the Senate to conduct its business.

It should also mean conclusion of Senate business at a reasonable hour on most days. I will caution however that the success of this schedule will require the cooperation of all Senators. If this schedule works as I hope it will, it could become a model for future Congresses. There are some changes in the rules that I have referred to as being studied by Senator PRYOR and also by Senator FORD in the Rules Committee.

For instance, I believe the recommendation of Senator PRYOR's group with regard to minimum cosponsorship on sense-of-the-Senate resolutions to be offered as amendments is worthwhile. While such a requirement may not prevent those amendments from being used to debate an essentially nongermane matter when germaneness would otherwise be required, it should reduce that practice.

The notion of considering bills section-by-section, with amendments being in order only to the pending section, is also worth looking into. While it may not produce the kind of dramatic results that some of its sponsors may hope for, it could be helpful in allowing the managers of large and complex bills to schedule the debate in a more organized fashion.

The budget process has become the focus of discontent on fiscal matters in particular. And with congressional processes in a jumble, the specter—some might say spectacle—of the continuing resolution and reconciliation bills of last December is still fresh with us.

The Budget Act of 1974 provided a process in which debate over national fiscal priorities could take place, and it gave Congress access to independent budget expertise by creating the Congressional Budget Office. Unfortunately, as the deficit has grown under this administration the ability of the budget resolution to be a meaningful forum for debate on budget priority has eroded. The evolution of increasingly complex budget procedures has led to a process that now is so technical, so confusing, and so prone to irresolution as to have lost much of its usefulness. The budget has become almost exactly what its authors sought to avoid in 1974, namely an accumulation of actions on individual legislative items rather than the overall fiscal plan for the Government.

Differences between the administration's spending priorities and those of the Congress have been an important source of procedural stalemate. Currently, the resolution of these budget differences is left to the implementing legislation; in other words, appropriation bills and a reconciliation bill. This process encourages the postponement of important decisions that delays compromise until the last minute, start of the fiscal year, which is the worst possible time, because the President and the Congress need to come to terms with each other and before the clock is almost out.

So the President threatens vetoes based on his budget, the Congress passes appropriations bills based on the budget, and the result is what neither side wants, an omnibus spending resolution. Some way must be found to bridge this gridlock before the 11th hour by forcing the issue earlier in the process, in the spring, rather than waiting until fall. The prospects for successsful and orderly completion of the budget and appropriation process could be greatly improved.

When the President and the Congress agree on the budget resolution, appropriation bills could go forward secure in the knowledge that veto threats need not be the order of the day.

My intention in these remarks has been to stimulate thought and discussion about some fundamental issues confronting the Senate and the Government. I have suggested a few areas. There are certainly others, and they should be explored. What I hope to do is to stimulate thought and action in respect to the budget process in particular that would help us to complete our work earlier, help us to improve the quality of our work, and at the same time improve the "quality of life" for those who continue to talk about it. I am interested in the quality of life as well.

There are other budget process changes that should be examined. Many of these are highly technical, such as the use of budget baselines or the inclusion of a capital budget. Others are complicated and interwoven with other processes, such as the change to a 2-year budget cycle. It is not my intention to delve into these areas now. I would suggest that the leadership of the Budget and Rules Committees meet to discuss what actions they could take this year to explore further the areas that I have

mentioned, as well as other ideas to reform the budget process.

I would make one caution, however. We should not rush headlong into an area as complex as the budget without considerable forethought. To do otherwise is to risk making the process even worse, and destroying whatever chance there may be to salvage the credibility of the Congress on budget issues.

If there is any chance to reform some of our procedures and processes to improve the quality of our work and focus our efforts on truly important issues, we must proceed with deliberation. These issues are worth addressing and they are worth addressing seriously. I ask my colleagues to also share their thoughts on these issues.

How much time do I have remaining?

The PRESIDING OFFICER (Mr. WIRTH). The Senator has consumed 20 minutes.

Mr. BYRD. Mr. President, I yield the floor now so that Mr. SPECTER may use his 15 minutes.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Chair.

Mr. President, when the majority leader and the acting Republican leader worked out the time arrangements, it was initially proposed that the Republicans would have 4 hours, the Democrats 1 hour, those on this side of the aisle would speak first, and the majority leader would have the last hour. I asked the assistant Republican leader if there might be some rebuttal for this Senator so that I could comment on the responses raised by the majority leader to the intentions which had been advanced in support of the resolution, and this 15 minutes was worked out. But, regrettably, there is little to comment upon, because in the opening 20 minutes of the majority leader's 1 hour, he has chosen as is his right, really not to comment on the resolution.

The resolution relates to a change in the arrest procedures in the Senate, and the majority leader has elected, in the 20 minutes he has taken up, to talk about the strict 15-minute rule on rollcall votes, about the bedchecks to avoid slow legislative starts, about the 3-week on and 1-week off rule, about the omnibus spending resolution.

The critical questions which are raised by the pending resolution are what procedures are to be followed for U.S. Senators who are subjected to arrest. Should there not be both a motion to request the attendance of absent Senators and, second, a motion to compel the attendance of absent Senators, as provided in the rules, before there is a motion to arrest?

The majority leader, on seeking the arrest last Tuesday night and Wednesday morning, made a motion to request the attendance, but no motion to compel the attendance, of absent Senators.

A critical issue in this matter has been the equality of application to Democrats as well as Republicans. Not a word has been mentioned about that really important subject.

Another critical issue has been the destruction of the warrants of arrest. Inexplicable. Warrants were issued about 1 a.m. on Wednesday morning; and when this Senator talked to the Sergeant at Arms later that same afternoon, the records had been destroyed, so that there could be no inquiry on the record, black and white, to see what happened here, notwithstanding the fact that the rules of the Senate say that Senate records are to be maintained; they are not to be destroyed.

The question has arisen about the issue of physical force and the appropriateness of that conduct, all factors considered. No mention of that.

I have an instinct that we will hear something about the issues, probably, perhaps, I hope. It was my hope, which I expressed in the opening statement, that during the course of this 5-hour session there would be a joinder of issues, that there would be an effort to deal with the substantive problems to see if we could identify the problem. Perhaps no problem exists. Perhaps the majority leader can convince the dozen Republican Senators who have spoken and the 45 Senators who voted to reconsider the arrest motion, including the Democratic Senators from Alabama—2 from that side of the aisle who joined all those on this side of the aisle. Perhaps there could be some persuasion that the warrants of arrest were properly issued. But that really has not happened.

Then we have the really fundamental question that is not an issue, one that Senator KERRY and I discussed briefly, and it is that someone has to set the rules. We all understand that, and we all understand the heavy responsibility that the majority leader bears.

Perhaps it was Senator ARMSTRONG, in his argument, in his presentation, who put it best when he talked about no legitimate purpose for having the Senate in session, in the context which we faced, in the context that there had been seven cloture votes and 45 U.S. Senators had spoken emphatically, within our rights, that S. 2 would not come to the floor for debate.

The majority leader has said that the Republicans overplayed their hand; they did not have to resort to the tactics of absenting themselves from the Chamber. In that statement there is a recognition that S. 2 was not to come to the floor. Given that recognition, what, then, the purpose of the all-night session? What, then, the purpose of calling Republican Senators to the floor?

Those are the issues, Mr. President, that have not been addressed. Do we have an obligation to be here? Yes, of course, we do.

When the majority leader reads about rule XIX, that no Senator shall absent himself from the service of the Senate without leave, we understand our requirements; and it was a very forceful statement taken by the Republicans because of the exigencies of the situation.

Senator QUAYLE PUT IT BEST: It is true that we have responsibilities, but so does the majority leader. If it is a classic filibuster, then the filibusterers stay on the floor, but they can suggest the absence of a quorum, and the majority has to maintain the quorum.

Mr. President, those are the issues. In the 20 minutes taken by the majority leader, talking about the 15-minute rule and the slow start and the bed checks and the 3-week on and 1-week off and the omnibus spending resolution, we have not gotten to what this resolution is all about. So there is no purpose in my taking any more time, and I yield the floor.

Mr. BYRD. Mr. President, as I understood it, in the time under my control, I would make the decision as to what I would say.

The distinguished Senator from Pennsylvania has made reference to his resolution. I will comment on the resolution. My comment will be brief.

The first paragraph, numbered 1: No arrest warrant shall be executed between the hours of 11 o'clock p.m. and 8 o'clock a.m., unless the pending business is of a compelling nature.

Mr. President, who is to determine? What does "compelling nature" mean? Who is to determine whether it is of a compelling nature or not? The Senate. The Senate determines that. We determined on the other evening that it was of a compelling nature.

To confine the time or the period during a 24-hour day during which the Senate could issue warrants of arrest to only the hours between 11 o'clock p.m. and 8 o'clock a.m., Mr. President, would render the Senate unable to operate in situations in which the Senate might feel, indeed, that the matter was of such compelling nature that there ought to be warrants of arrest issued.

Let me just insert in the RECORD a list of major items that were considered in the Senate between the years 1975 and 1987, inclusive, on which votes were conducted during the hours between 11 p.m. and 8 a.m. I ask unanimous consent to have this material printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAJOR LEGISLATION ON WHICH VOTES WERE TAKEN BETWEEN 11 P.M. AND 8 A.M.

1975—Tax Reduction, H.R. 2166, Public Works Appropriation, H.R. 8122, and New York City Assistance, H.R. 10481.

1976—Tax Reform, H.R. 10612.

1977—Natural Gas Pricing, S. 2104.

1978—Sugar Stabilization, H.R. 13750, and Energy Taxation, H.R. 5263.

1979—First Budget Resolution, S. Con. Res. 22, Continuing Appropriations, H.J. Res. 404, Windfall Profit Tax, H.R. 3919, and Chrysler Loan Guarantee, H.R. 5860 and H.J. Res. 467.

1980—Draft Registration, H.J. Res. 521, First Budget Resolution, S. Con. Res. 521, Employee Retirement, H.R. 3904, Military Procurement Authorization, H.R. 6974, Railroad Deregulation, S. 1946, and Continuing Appropriations, H.J. Res. 610 and H.J. Res. 640.

1981—Budget Reconciliation, S. 1377, Tax Act, H.J. Res. 266, Farm Bill, S. 884, Continuing Appropriations, H.J. Res. 325 and H.J. Res. 357, and DoD Appropriations, H.R. 4995.

1982—Justice Department Authorization, S. 951, Defense Authorization, S. 2248, First Budget Resolution, S. Con. Res. 92, Voting Rights, H.R. 3112, Tax Increase and Medicare/Medicaid Cut, H.R. 4961, Balanced Budget Constitutional Amend., S.J. Res. 58, Gas Tax-Highways-Jobs Bill, H.R. 6211, Natural Gas Prices, S. Res. 515, and Continuing Appropriations, H.J. Res. 631.

1983—Supplemental Appropriations, H.R. 1718, First Budget Resolution, S. Con. Res. 27, Social Security Reform, H.R. 1900, Defense Authorization, S. 675, Public Debt Limit, H.J. Res. 308, Civil Rights Commission, H.R. 2230, and Continuing Appropriations, H.J. Res. 413.

1984—Budget Reconciliation, H.R. 2163, Defense Authorization, S. 2723, Math/Science Education, S. 1285, Commerce-Justice-State Appropriations, H.R. 5712, Supplemental Appropriations, H.R. 6040, Continuing Appropriations, H.J. Res. 648, and Public Debt Limit Increase, H.J. Res. 654.

1985—Budget Resolution, S. Con. Res. 32, Defense Authorization, S. 1160, Public Debt Limit/Gramm-Rudman, H.J. Res. 372, Public Debt Limit Extension, H.R. 3669, and Farm Bill, S. 1714 and H.R. 2100.

1986—Budget Resolution, S. Con. Res. 120, Budget Reconciliation, S. 2706, Supplemental Appropriations, H.R. 4515, Tax Reform, H.R. 3838, Public Debt Limit/Gramm-Rudman, H.J. Res. 668, Public Debt Limit Extension, H.R. 5395, Sequestration Resolution, S.J. Res. 412, Federal-Aid Highway Authorization, S. 2405, and Continuing Appropriations, H.J. Res. 738.

1987—Budget Resolution, S. Con. Res. 49, Trade and Competitiveness Act, S. 1420, Defense Authorization, S. 1174, Budget Reconciliation, S. 1920, and Continuing Appropriations, H.J. Res. 395.

Mr. BYRD. In each of those years, I have set forth important issues on which votes were conducted between 11 p.m. and 8 a.m.

This will show, Mr. President, that important votes are not confined to the hours between 8 a.m. and 11 p.m., but that, indeed, many important votes through the years have occurred in the hours that could, in the future, be off limits if this resolution offered by the distinguished Senator, Mr. SPECTER, and others, were to be agreed to and if the Senate found itself without a quorum.

What my suggestion would be as far as point No. 1 in Mr. SPECTER's resolution is that he and the other Senators ought to offer a resolution to amend the Constitution. I respect the distinguished Senator from Pennsylvania—I have observed him on the Judiciary Committee—I think he is a great constitutional lawyer. I have high regard for him. But, Mr. President, I respectfully suggest that he and the other cosponsors need to give careful thought as to what they are proposing in article No. 1:

> No arrest warrant shall be executed between the hours of eleven o'clock p.m. and eight o'clock a.m., unless the pending business is of a compelling nature.

Mr. President, may I point out that in the book Formation of the Union—the account of actions that were taken at the Federal Convention in 1787—when Gouverneur Morris, who was from the State of Pennsylvania, said, "The secession of a small number ought not to be suffered to break a quorum," and by secession he meant walking out of the Chamber in order to prevent a quorum.

That was a Senator from the State of Pennsylvania who made that comment—the State now represented by Senator SPECTER.

Gouverneur Morris also said this: "If a few can break up a quorum, they may seize a moment when a particular part of the continent may be in need for immediate aid to extort by threatening secession some unjust and selfish measure."

Mr. President, Mr. Randolph and Mr. Madison, both of Virginia, moved to add to article VI, the language that was finally agreed upon, "and may be authorized to compel the attendance of absent Members, in such manner, and under such penalties as each House may provide."

That was agreed to by all except the Pennsylvania Senators, who were divided, one Senator voting for the motion and one against.

The Constitution says that a majority of each House shall constitute a quorum: "but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such manner, and under such penalties as each House may provide."

The Constitution does not say that a smaller number may adjourn from day to day and may be authorized, "except during the hours of 11 p.m. and 8 a.m.," to compel the attendance of absent Members, in such manner, and under such penalties as each House may provide. No such exception is made in the Constitution.

Mr. President, the Constitution does not limit the hours of the day when Members may be "compelled" to attend in order to establish a quorum.

So much for the Senator's resolution. I am sure that the ad hoc committee on this side of the aisle, chaired by Mr. PRYOR, and the Rules Committee, chaired by Mr. FORD, which is the official, formal standing committee, will carefully consider the resolution in its entirety.

I could make further comments on the Senator's resolution but I will not do so at this time.

Mr. President, now as to the general tone of what has been said today, and heretofore, by Senators who have taken great umbrage because they deliberately engaged in a tactic which resulted in the issue of warrants of arrest.

Public office is a public trust and a public responsibility.

Being a U.S. Senator is not a 9-to-5 job.

The Senate is a slow-moving body. It is set up to allow for unlimited debate to protect the rights of the minority. That is what makes it unique.

The fight on S. 2 is a good example of the ability of a minority to hold up a piece of legislation, indeed even killing it by refusing to permit it to be voted on. The minority is within its rights when it kills a bill or holds it up.

But I submit that the minority does not have a right to deny the Senate a quorum by deliberately not coming to the floor. That is the tactic that amounts to a tyranny by the minority and, even worse, to the evasion of responsibilty. That is a filibuster by absence.

I have listened to several Senators tell me what my responsibility is as majority leader. It seems to me that every Senator has a responsibility under the Constitution to be here and to vote. We get paid for our work. A good many people in this country think we are overpaid, and I am sure they believe that we ought to be here to vote when voting is going on.

We are sent to this body to represent our people and to protect their rights. We are paid to be on hand to register our vote on behalf of our people. We are not paid to avoid the duties of the Senate. That is why the Senate is empowered to compel the attendance of absent Senators.

It is folly to set time limits during which the Senate may not "compel" attendance to conduct the people's business. Often we are in session late because the minority is exercising its right, the right to which it is entitled, to hold the floor to make its views known or to kill a bill.

There are those who today have said that the majority has the responsibility—in other words, the Democrats in this instance—has the responsibility to establish a quorum. Mr. President, the majority has the responsibility to produce a quorum, but the minority

also has a responsibility to help produce a quorum. It was the responsibility of the majority to take whatever action was necessary to produce a quorum and it was the responsibility of the minority to help produce that quorum.

I hope that those who offer this resolution have thought through what it means.

What we are doing here if we were to approve this resolution would be to cement in stone the ability of Senators to stop any action simply by hiding in their offices.

I heard comments today by the Senator from Indiana about "Keystone cops."

Mr. President, the Senate arrest order was not a game. It was a serious matter, and Senators have a serious responsibility to be present in order to keep a quorum, because without a quorum there can be no business transacted, only a motion to adjourn or motions to establish a quorum.

Compelling attendance is a legitimate action, seldom used, which is meant to avoid the possibility of a forced adjournment. The option exists because the people's business is supposed to be done and must not be stopped by such a tactic.

There was some reference made to its having been a laughing matter. Mr. President, it was not a laughing matter. Imagine Senators who are supposed to be grown up people, adults, elected by the people to serve here—and most Senators would have given their right arm to get here—imagine seeing them run down the hall, run when they see the Sergeant at Arms. They were in the Republican Cloakroom to my right when the motion was made. Faces were peering out of their door. There were Senators there. They made a calculated decision to run and hide, barricade their offices, put chairs against the doors.

Mr. President, we are not elected to play games like children. Then, because warrants of arrest were issued under the authority given to this body by the Constitution of the United States, now they want to cry about it. We have a little crybaby stuff going on here because the Senate issued an order that Senators should come to this floor and answer the quorum call.

Senator PACKWOOD did not have to be carried in through the door. He was very gracious when he came into the Chamber. But he could have walked in. The Sergeant at Arms and his associates did not ask to carry Senator PACKWOOD into the Chamber. Senator PACKWOOD made that request of them. He walked most of the way until he came to the Chamber door. Then he asked the officers to carry him in.

And the warrants were not issued just against Republicans. The order was for the Sergeant at Arms to arrest "absent" Senators. All Democratic Senators came, with the exception of one Senator who was campaigning. I do not know where he was in these United States in that particular instance. But Senators BIDEN and KENNEDY were very ill and Senator HOLLINGS was away because of a death in his family. So there was not anyone left to arrest but Republicans. And they were the people who made the calculated decision to run and hide and barricade themselves in the offices and avoid arrest by the Sergeant at Arms, avoid coming to the floor and doing their duty. They brought it on themselves. Now they would like to pretend that it was harassment. The purpose of the arrest was to obtain a quorum, not to harass Senators. Only one Senator was actually brought into the Chamber because that was all that was needed to obtain a quorum and allow the Senate to proceed. The remaining warrants were not pursued, precisely because there was no desire to harass. Harassment would have meant continuing the arrests even after the quorum was established. And that was not done.

So, legitimate debate, fine. If our Republican friends want to oppose S. 2, fine. Legitimate debate, good. Opposition to a measure, fine. But stopping the majority from proceeding with the people's business by evading the Senate floor was not, in my view, a legitimate exercise of minority rights.

When we take the oath of office as U.S. Senators, we swear to "well and faithfully discharge the duties of the office." Nowhere in that oath does it stipulate that those duties are to be carried out only during certain working hours.

I submit that the people are tired of hearing certain Members complain about the tough life that they have here in the Senate. What about the millions of Americans who work 6 days a week or 7? What about the farmer who has to be out early planting his seed and out early and late harvesting his crops; the sailor, the soldier at his post of duty?

I suggest that there are several million Americans who would be glad to trade places with U.S. Senators. We asked for this duty. We swear to the people we will be on the job and represent their views and protect their rights. I wonder what they are now thinking, listening to all the tales of woe that are being told in the Senate here today. Let us all remember that it was only 10:43 p.m. when this tactic of not showing up on the floor began to be used.

Instead of thanking the good Lord for the privilege of serving in this body, we have bored the American people today with the rehash of a week-old incident. I have heard almost 4 hours of complaints about the tough lives that we live.

Let me just take a minute and remind us all about what the outrage is about. It is about an attempt to get the big money out of politics. That prospect is so odious to some Senators that they chose to prevent the Senate from even debating it. What must the American people think of that? Money is so important in this body that we cannot even have a floor debate about putting limits on campaign spending, so extraordinary tactics were used to prevent that discussion. And that fact, in and of itself, convinces me more than ever that we will have to revisit the issue in some way at some point.

Money has become so important to Senators that last week it stopped the Senate cold. And that is not acceptable.

Let anybody who thinks that I enjoyed taking the step I had to take last week, think again. I did it because it was my duty to keep the Senate from being stopped cold by a calculated, deliberate tactic.

What happened last week did not reflect well on the Senate, as I heard today—nor did it reflect well on the Senators who elected to use the tactic.

But it was not the arrest that caused us to look bad. It was the spectacle of Senators running to avoid coming to the Senate floor and hiding in their offices that reflected badly on the Senate. No wonder the public trust continues to erode. No wonder the common view of politicians is so cynical. No wonder the American people think we always have our hand out for money.

I hope that something other than wrangling or rancor comes out of the discussion today. It is probably a vain hope, but I still hope that those who have been wanting to bring this up and rehash it, will stop and reflect on Senator JOHN STENNIS. Senator STENNIS came out of his bed to be here. He even offered to do night duty during all-night sessions. I have not heard any complaining by Senator STENNIS. I would think that that fact alone should shame some of those who are crying here today.

I also hope that Senators might stop and reflect on what it means to hold public office. It means that the people have put their faith and trust in us as officeholders. Our people have given us a mandate to represent their collective interests. It is a serious mandate and a sober responsibility. It means sacrifice, and it often means personal sacrifice. It means giving your best to your work all the time. And when we do not like it, nobody is going to force any of us to run for reelection. It means setting an example for our young people.

It is human to complain about late hours and inconvenience. Everybody does it. But we who serve in this body have been given an extraordinary

privilege and solemn responsibility and a promise to "faithfully discharge the duties" of the office before God and the people on the day that we begin each new term of service in this body. That is the oath we take when we are sworn in as Senators.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The majority leader has 19 minutes remaining.

Mr. BYRD. Mr. President, how much time does the Senator desire?

Mr. BREAUX. May I have 3 minutes?

Mr. BYRD. Mr. President, I yield 3 minutes to the distinguished Senator from Louisiana, [Mr. BREAUX].

Mr. BREAUX. Mr. President, I thank the majority leader for yielding.

I was not going to participate in this debate, but I became increasingly disturbed by some of the voices and words that I heard from our good friends on the other side about how incensed, how resentful, how insulted they were by the actions of the majority leader in carrying out the rules of the Senate.

You know, when I heard them speak of the tyranny of the majority, I really considered the situation in the U.S. Senate where the rights of the minority are protected unlike any other institution. Over in the House, where I served for 15 years, the rights of the majority were that you could do anything if you had a majority vote. You did not have to have two-thirds of a majority. If you had one plus half, you could take any action you wanted.

The rights of the minority in this body are protected. They are protected in a number of ways when bills come up. If the minority does not like the bill, the minority can argue against it and they can vote against it. If they want to do more than that, and they do not want to vote, they have the unique privilege of filibustering. They do not even have to vote unless we can find 60 votes, more than a majority, to come in here and say we are going to stop their filibuster.

But they do not have the right, I would submit, to run away. They do not have the right to go to their offices and not participate as happened that night.

It was not an accident, I say to the distinguished majority leader, if you look at what happened during the night, if you look at the votes that occurred. At 9:57 p.m., we had 33 Republicans answer the call who were here and ready to do work. Something must have happened between then and 10:43 p.m., because at 10:43 p.m. we lost all the Republicans. Zero Republicans responding.

And then at 11 o'clock, again on the motion to compel the attendance of Senators, zero Republicans showed up to answer that rollcall.

Then I guess their minds changed again because at about 2:09 a.m. we had another vote in the morning. All of a sudden 41 Republicans showed up and answered the roll. Where were they between those two timeframes? I would suggest that they were here in the Capitol. They were refusing to come to work.

Now, the Constitution and the rules of this Senate tell us what to do, as a body, when we cannot find the Members. The first thing the majority leader can do is make a motion to request the attendance of the Senators. The majority leader did that and no Republicans answered. So what is the majority leader supposed to do at that time? Is he supposed to shut down the U.S. Senate?

No, we go to the next stage of the rules. The next stage of the rules say that after a motion to request the attendance, where you are literally pleading with people to come and do work, if they do not show up after that the next stage is a motion to compel the attendance of the Members of the U.S. Senate. The rules were then followed and the majority leader made a motion to compel the attendance of the Senators. And this, apparently, is what the other side is all upset about, the motion to compel their attendance. This is the rules of the Senate. How can they object to the majority leader following the rules of the Senate?

I would ask them, what are you supposed to do? What is the majority leader supposed to do to get the other side to come to work? Take an ad out in the Washington Post?

Should the majority leader take an ad out in the Washington Post saying: "Please come, all Republican Senators, to the Senate to do work?" Are we supposed to shoot off roman candles on the floor of the Senate to get their attention to let them know that business is being conducted?

I would suggest the majority leader is acting the way we were supposed to act. He followed the rules of the Senate. The motion to compel is not unique, it is not a tyrannical act, it is part of the established procedures of the U.S. Senate when Members, regardless of which party they happen to be in, refuse to come to work and that was the situation at that time. If they do not like the bill, they can argue against it. If they do not like the bill, they can vote against it. If they do not like the bill, they can filibuster; but they do not, I would suggest, have the right to run away and hide and that is what happened and the motion to compel is the only thing we have to get order in the Senate and I commend the majority leader for doing that.

Mr. BYRD. I thank the distinguished Senator.

Mr. CRANSTON. Will the majority leader yield?

Mr. BYRD. I yield to Mr. CRANSTON. I yield 2 minutes.

Mr. CRANSTON. Mr. President, I rise to speak in behalf of the action necessarily taken by our distinguished majority leader when the Senate was without a functioning quorum. I know that the leader has cited the Constitution and the rules of the Senate as the basis for his action, but just to reiterate that foundation for the action that the Senate took following the leadership of the majority leader, I want to read from the Constitution. Section 5 comes very early in article I, the very first article of our Constitution. This part was written by the Founding Fathers, the geniuses who provided the basis for our country's great survival and leadership in the world and our great society, written over 200 years ago. The 5th section of the very first article states: "Each House"—meaning the House and the Senate—"shall be the Judge of the elections, returns, and qualification of its own Members and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may be authorized"—that smaller number—"may be authorized to compel the attendance of absent Members, in such manner, and under such penalties as each House may provide."

And that is exactly what the Senate did under the motion offered by the distinguished Senator from West Virginia, our majority leader.

Turning to the rules of the Senate, the rules state, rule VI, item 2: "No Senator shall absent himself from the service of the Senate without leave." It goes on to say: "Whenever upon such rollcall it shall be ascertained that a quorum is not present, a majority of the Senators present may direct the Sergeant at Arms to request, and, when necessary, to compel the attendence of the absent Senators, which order shall be determined without debate."

Plainly the Constitution and the rules provide for exactly what we did because this body could not function if a number of Senators absented themselves for one reason or another. Partly it was illness the other night, partly it was a death the other night, and it was other reasons which were less compelling which caused us to be without a majority able to function.

Whenever the Senate gets into that situation it cannot function. We would be without a government. We have to take the sort of action the Senator from West Virginia, our majority leader, asked us to take and we did take.

Mr. BYRD. Thank you. I yield to the Senator from Montana, 3 minutes.

Mr. MELCHER. Mr. President, the Senate is certainly a different legisla-

tive body than other legislative bodies. One of the most significant differences is the right to filibuster and that right can be exercised by one Senator. He can speak at length, if he gains the floor and holds the floor and he can hold that floor as long as he wants to. He can hold up any action of the Senate.

A small group of Senators can do the same and it is done frequently and it is what makes the Senate different. A determined minority can block a bill. They can block it even though a majority wants to pass a bill. That is a right of Senators and that is what makes the Senate a different legislative body. But I do not believe that my group can win a filibuster by lack of quorum unless the majority leadership refuses to use the Senate rules. Whether it is a Republican or Democrat in the majority here, it makes no difference. The floor is controlled by the leadership and using the Senate rules means that the majority leader enforces a quorum under the rules.

I favor what our majority leader did the other night because we cannot have, under the guise of a filibuster, winning it by the majority leadership just rolling over and refusing to exercise those rules that clearly are there to establish a quorum for the Senate to operate under.

I favor filibusters. I do not think that is any surprise to this body. I think that is what makes the Senate what it is; the type of legislative body where a minority can block action if they are determined enough and if there are at least 40 to prevent cloture. But you cannot win it, nor would I want it to be won, simply by a minority being able to control the floors and refuse or have the majority leadership refuse to exercise those rules to establish the quorum.

I commend our leader for taking the action that he did.

Mr. BYRD. Mr. President, I thank the Senator. I believe Mr. SPECTER has some time left and I believe under the agreement he was to use his first and I was to use mine last.

How much time does each have remaining?

The PRESIDING OFFICER. The Senator from Pennsylvania has 7 minutes. The majority leader has 8½ minutes remaining.

Mr. SPECTER. I thank the majority leader for yielding the floor and permitting this side to take some more of its time. There were a number of my colleagues who wished to speak who did not have an opportunity to do so. If they would come to the floor directly, I believe that there would be some time left yet for them to make some comments. And in the interim, until they arrive, I shall reply to the comments which have been made.

Those on this side of the aisle are fully aware of our responsibilities, and our voting records are good. In the first session of the 100th Congress, this Senator's voting record was 99 percent plus. We do not like to miss votes. It was especially problemsome being immediately off the Senate floor. We do not take our voting records lightly, nor do we take our public responsibilities lightly.

We acted because we felt inappropriate action was being taken by the majority, and our assistant Republican leader has characterized it as a tyranny of the majority. A response has been made that there was tyranny of the minority, and I regret to say that this discussion, at least in this Senator's opinion, has not advanced the cause of compromise, comity, or resolution of these issues.

When names are called, like crybaby stuff, I do not believe that advances the cause here, nor do I believe there is any advancement when we are lectured about our responsibilities, because each of us was selected by the people of our own States, just as those who made the accusations. We have to answer to the people of our States. This Senator is prepared to do so. I believe people will understand that when there is no legitimate legislative business to be performed, and that has been conceded, in effect, that there is no point in subjecting ourselves and this body to what is conclusively a demeaning process. We are prepared to answer that. We are prepared to contest the conduct of the majority in terms of their discharge of their own responsibility, as those questions are answered by the electorate.

This issue, as it is evolving, seems to me to be one for appropriate debate in the electoral process, and so be it. It had been the hope of this Senator that we might come to some conclusion and some resolution, but when the majority leader takes up the resolution, which has four points, and makes a comment only about point 1 and says it will be unconstitutional for this body to limit the exercise of warrants of arrest from 11 to 8 because the Constitution says that there is authority to compel, that argument is hardly worth answering. There can be obvious authority to compel, and this body had set its own rules, as the Constitution says, and delimit it.

There are other provisions: that the appropriate officer sign warrants of arrest in accordance with the rules of the Senate. There was significant silence on the other side. There is the important consideration that the warrants of arrest ought to be uniformly applied for Democrats and Republicans alike.

There is the issue of the warrants being destroyed. No explanation was made by the majority in control of this body who appoints the Sergeant at Arms as to why those warrants were destroyed and what happened to them.

It is very significant for the proposed rule to state the reasons for the arrest. There was not a word in rebuttal; not a word in commentary. That is the fundamental point of telling somebody why they are being subjected to the extraordinary process of a warrant of arrest. I notice the Senator from Maine is on the floor.

I am going to cease talking at this time and reserve the remainder of my time and ask the Senator from Maine the question, as a former U.S. district court judge, about the importance of the statement of reasons in a warrant of arrest or a search warrant. It has to be done with particularity backed up with an affidavit. Why not a simple statement of reasons before you chase a Senator down the hall? We are not hiding. We were exercising our rights. This Senator went about his regular business, did not hide from anybody, and does not hide from anybody.

Why not address these important issues of a statement of reason, proper signatory and party equality of treatment?

I thank the Chair.

Mr. BYRD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Pennsylvania has 1 minute and 20 seconds. The majority leader has 8 minutes and 30 seconds.

Mr. BYRD. Mr. President, I yield 4 minutes to Mr. MITCHELL. I call attention to the fact that under the understanding, the Senator was to have finished his rebuttal, and then I was to close. That is all right. The Rules Committee will look at his resolution and treat it appropriately.

I yield to the Senator from Maine.

Mr. MITCHELL. Mr. President, the ability to compel the attendance of absent Members is fundamental to the ability of any legislative body to conduct its business. The Senate requires a quorum to do business. It cannot function without a quorum being present. For that reason, the Senate, the House, every legislative body, must be able to compel the attendance of absent Members.

In the case of the Senate, as has been made clear here, that authority is directly grounded in the Constitution. That is a fundamental, inescapable part of any legislature's ability to resolve itself in a quorum for the conduct of its business. Senators are elected and are compensated by the American people to be here to conduct the Nation's business, not to deliberately avoid coming to the Senate floor to do the business of the Senate.

Mr. President, I accept the assertion of the Senator from Pennsylvania that he did not deliberately avoid coming to the Senate, but I believe it is indisputable that several other persons,

who have acknowledged doing so, did deliberately avoid coming to the floor of the Senate to do the Nation's business.

Regardless of our individual perceptions of the relative importance of any specific bill, it is our duty to be here to deliberate and vote on it. Our responsibilities do not disappear when the Sun goes down, and it is not appropriate for any individual Member of the Senate to determine that a bill is partisan or unnecessary or inappropriate and thereby use that to form a subjective judgment to deliberately absent himself or herself from the Senate's activities.

So I think what we are talking about here is a power so fundamental that a legislative body could not function without it, and it is for that reason that it is explicitly set forth in the Constitution and the rules of the Senate.

I believe that the central issue remains campaign finance reform, not the question of authority to compel the attendance of absent Senators or the process by which that was conducted in this case. That was the issue, and the only issue, in fact, before the Senate, whether or not there will be limits on the amount of money spent in American political campaigns.

The eight votes, the hours and days of debate all focused attention on that single issue. And the fact is, the minority of the Senate did not want limits on the amount of money spent in the American political campaigns. The majority did. By virtue of the rules of the Senate, the minority was able to prevent a vote from occurring on that central issue. We ought not, throughout any of this debate, lose sight of that central fact. The issue then, the issue today, the issue tomorrow is whether or not there are going to be any limits on the amount of money spent in political campaigns. My time is up. I thank the Chair.

Mr. SPECTER. Will the Senator yield for a question? Will the majority leader yield?

Mr. BYRD. Would the distinguished Senator from Pennsylvania now use his remaining time, as was the understanding, and we will close this debate?

Mr. SPECTER. I thank the majority leader. That was the understanding. The majority leader again referred to my time remaining, so I do utilize that time.

I did not hide, but I did absent myself from the Chamber along with my colleagues. I did not run. I did not hide. I exercised my rights in free America as a U.S. Senator.

The question I would address to the Senator from Maine, or perhaps the majority leader is: Given your experience, Senator MITCHELL, as a Federal judge who has doubtless approved many warrants of arrest and search and seizure warrants which have particularized statements of facts and probable cause supported by affidavits, why should not there be a statement of reasons in writing before a U.S. Senator is arrested? Why should a U.S. Senator be subject to arrest for less cause than a common criminal?

Mr. MITCHELL. Will the Senator permit me to answer on his time? I do not have any time remaining.

Mr. SPECTER. To the extent that I have time, I yield.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. BYRD. I ask unanimous consent that the Senator from Pennsylvania may have 2 additional minutes.

Mr. SPECTER. I thank the majority leader.

Mr. BYRD. And that I may have 2 additional minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Pennsylvania is recognized for 2 additional minutes.

Mr. SPECTER. My question to Senator MITCHELL is, given his experience as a Federal judge where he has signed search warrants and arrest warrants which have particularized and detailed statements of fact and supported by affidavit, why should not a U.S. Senator at least have the right to have a statement in writing of the reasons for his arrest? Why should a U.S. Senator be subject to arrest on grounds to be treated worse than a common criminal?

Mr. MITCHELL. If a U.S. Senator were subject to arrest for a crime in a manner comparable to that of what the Senator refers to as a common criminal, the warrant would have to have a particular statement. The warrant in this case was to merely compel the attendance of the Senator's presence on the Senate floor, that is, to do that which the Senator was elected to do. I do not believe it is a proper analogy to compare the proceeding to compel a Senator to do that which he is elected to do with an arrest and charging of a crime.

Mr. SPECTER. But is not the Senator from Maine missing the point, that the act of taking someone into custody, not for later trial or not subjected to punishment on conviction but the act of taking someone into custody and subjecting that person to arrest and depriving that person of his liberty, for however a short period of time via the arrest process, requires under our Constitution a statement of probable cause and is not that essential ingredient the same when a U.S. Senator is arrested as Senator PACKWOOD was?

The PRESIDING OFFICER. The 2 minutes of the Senator from Pennsylvania have expired.

Mr. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The majority leader has remaining 6 minutes.

Mr. BYRD. I yield 2 minutes to the Senator from Maine and then 3 minutes to the Senator from Maryland.

Mr. MITCHELL. I think what is occurring here is a confusion of terms. I believe that the use of the worl "arrest" in the procedures utilized in this case has led to a confusion of thought that produces the analogy comparing it to the arrest as the Senator has described it. The reason that the particularization of the warrant occurs is that a person is to be deprived of custody and charged with a crime for which punishment may ensue if conviction occurs. In this instance the Senator is not charged with a crime. There is no punishment involved. The only compulsion is to have the Senator do his duty, that is, to perform those acts for which the Senator was elected and for which the public pays.

I do not believe that the analogy drawn by the Senator from Pennsylvania, whose legal background is impeccable and for whom I have greatest respect, with all due respect I do not believe the analogy between this process and that goes any deeper than the use of the same word "arrest."

I think that has led to a confusion of thought on the part of many who have attempted to pursue that analogy and I simply do not share it.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. SPECTER. Mr. President, I ask unanimous consent for an additional 2 minutes to pursue this issue with the Senator from Maine.

Mr. BYRD. Mr. President, I am not going to object. The distinguished Senator is a former district attorney. Let us remember, however, that we are not in the courtroom here. We are in the U.S. Senate. The U.S. Constitution and the rules clearly tell us what our responsibilities are as Senators. I have no objection to the Senator having 2 minutes. I hope he will use it now.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 2 minutes.

Mr. SPECTER. I thank the majority leader. I shall use the 2 minutes now. After 5 hours, we are finally getting 2 minutes of debate.

My response to the Senator from Maine is that an arrest is an arrest. It constitutes taking someone into custody, whether the person is charged with murder or some more heinous offense, like Senator PACKWOOD was charged with, and taken into custody. What the Senator from Maine refers to as to what follows later on the charge of a crime, there are additional remedies—challenging the legitimacy of custody through habeas corpus.

When a person is charged with a crime, there are additional remedies of the presumption of innocence and proof on evidence beyond a reasonable doubt, but the segmented portion of an arrest is the same whether Senator PACKWOOD is arrested in his office or a man charged with murder is arrested in his home. The critical issue is what happens when a person is taken into custody. And since anybody charged with any crime has an absolute right not to be detained absent probable cause and a statement of reasons, my submission is that those minimal rights ought to be afforded to a U.S. Senator, and we at least ought to have a statement of reasons to justify that detention and arrest.

I thank the Chair.

Mr. BYRD. Mr. President, the critical issue here is whether the Senate is going to be allowed to exercise its powers under the Constitution and under its own rules to establish a quorum in order to do the people's business. That is the critical issue—not some question that we might be discussing if we were all in a courtroom and the distinguished Senator from Pennsylvania were demonstrating his great abilities as a district attorney.

The question is, Is this Senate going to be allowed to function? And if a minority can close down this Senate for one night by boycotting the floor, it can close the Senate down for 1 week or 1 month. That does not make sense.

Mr. President, I yield 2 minutes to the distinguished Senator from Maryland.

Mr. SARBANES. Mr. President, I think it is important to realize that the genesis of this entire issue is the fact that a faction of the Senate willfully and deliberately absented themselves from doing the Senate's business. They made a conscious decision not to participate in doing the Senate's business, thereby left the Senate without a quorum so it could not proceed with the work at hand.

Now, the Constitution clearly provides power in legislative bodies in order to correct that situation. This so-called arrest was an effort to require Members of the Senate to do their duty. They were elected as Senators by the people. They are paid by the taxpayers as Senators to do their job. The punishment that was connected with the arrest was to bring the Senator to the floor of the Senate. That was the punishment. Senators deliberately walked away from the Senate, refused to answer the quorum calls, refused to answer the motions to instruct, in effect sought to bring the institution to a dead halt.

The Founding Fathers thought of that possibility. It has occurred previously in history. It has occurred prevously in this institution. What was done in this institution on prior occasions was exactly what was done the other evening.

This lamentation about the arrest punishment was to bring the Senator from where he was found in his office to the floor of the U.S. Senate in effect saying, "Senator, come to the floor of the Senate; do your job."

The PRESIDING OFFICER. The Senator's 2 minutes has expired.

Mr. SARBANES. "Meet your responsibilities. Help to make the institution function, and let democracy be practiced instead of walking away and seeking in effect to destroy the ability of the institution to do the people's business."

I thank the leader for yielding me time.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania has 20 seconds.

The majority leader has just over 30 seconds remaining.

Mr. BYRD. I yield back my time, Mr. President.

Mr. SPECTER. Mr. President, when the Senator from Maryland talks about the punishment, to be brought back to the Senate floor it is not punishment at all. The punishment arose when Senator PACKWOOD had his office entered without his consent with a passkey, when Senator PACKWOOD had someone leaning on him, and when Senator PACKWOOD had someone physically carry him into this Chamber.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, the fundamental set of rules which governs our system of free government is the Constitution. Above all else. This body owes fidelity to that document of freedom and fairness. Accordingly, when the Constitution's rules and spirit of fairness awaken the Nation to an awareness that its government may not be protecting individual liberties, this body has a duty to stop and examine the Constitution and the offending actions. This duty is magnified even further when the offending action is perpetrated within the Halls of the Senate itself.

Several days ago, a Senator was arrested and literally carried onto the Senate floor in the middle of the night during a heated political confrontation. The passion of that moment has passed, but its significance to the way the Senate is run and to the respect the Senate shows for the Constitution require us to pause a moment and reexamine the propriety and constitutionality of those moments. Today, several days after the events of that charged midnight affair, we can better measure what happened against the standard of the Constitution.

I do not propose this inquiry to tear the scabs off of political wounds. Those I hope remain healed. I propose this inquiry out of a sense of duty that the Constitution must be followed by this body above all others. If this body, in a moment of passion has flaunted our document of freedom, then this body must take corrective steps to ensure it never happens again.

ARTICLE 1, SECTION 5

Immediately after a Senator was arrested against his will in the middle of the night, this body was presented with explanations that this action was justified by the Constitution. Indeed article 1, section 5, states that:

> Each house * * * may be authorized to compel the attendance of members, in such a manner, and under such penalties as each House may provide.

Thus, by its terms, the Constitution places the interpretation and implementation of this provision within the discretion of "each House."

This senatorial discretion, rather than an excuse for lax treatment of constitutional protections, is a requirement that this body adhere to exacting standards of constitutional conduct. The Senate must be profoundly careful to fulfill the letter and the spirit of the Constitution under article I, section 5, because no other branch can or will correct our mistakes and because the Nation will watch closely to observe how the Senate follows the Constitution when it has no fear of correction from the executive or the judiciary. This is the ultimate test. The entire Nation—students, teachers, lawyers, judges, citizens everywhere—will observe whether the Senate attempts to stretch the meaning of the Constitution beyond its intended purposes or whether the Senate attempts to ignore some precious protections of the document. In short, the Nation will observe whether the Senate will adhere to the Constitution with consummate care or whether it will allow passing political agendas to color its interpretations of the document.

With this solemn responsibility in mind, the Senate should carefully consider the purposes of article I, section 5. That section sets forth some basic procedures for congressional proceedings. Two overriding objectives of this section are clear: First, each house is given independent authority to set its own rules. Second, a corollary to the first objective, each House is made independent to prevent interruption of its essential business.

The framers knew that Congress had the responsibility to set national policy and appropriate funds for the Government. Thus, they provided protections to ensure that the essential functions of Congress could not be stopped. For instance, neither House can adjourn without consent from the other House. The "compel attendance" language falls in this category. Its primary intent was to prevent in-

terferrence with Congress' essential function of running the Government.

This is the first point where we must examine what happened several nights ago. This provision was not invoked to protect the essential functions of Government, but for political advantage. This stretches the provision far beyond its intended use. The essential functions of Government were not threatened in the middle of the night when no quorum was present.

Article I, section 5, also states explicitly that it is to be implemented "in such manner" as Congress provides. Some have leaped to the conclusion that the compel language of the Constitution means use of arrest and bodily force are appropriate. To the contrary, the Constitution clearly states that attendance of Senators may be sought in many different manners.

In fact, the day after the unfortunate midnight event, the majority leader made a similar motion several times, but with the instructions that the Sergeant at Arms request the attendance of Senators. This affirms that an alternative manner would have been a request instead of an arrest order. Moreover, if that request had been ignored the Senate as a body might have imposed ethical sanctions for dereliction of duty. The majority leader had many options beyond an arrest order. In fact, this suggests further that the arrest order was a political ploy because less onerous and offensive options were clearly available and indeed used the following day. Those less offensive and more constitutional options were not employed. Instead Senators were taken into custody in the middle of the night in a scene reminiscient of the Gestapo.

In short, article I, section 5, was stretched far beyond its purpose. It was meant as a protection for the essential business of Congress, not as a political tool to be wielded for partisan advantage against one party in the middle of the night.

CONSTITUTIONAL CONTEXT

The Constitution gives many explicit powers to the Congress and the U.S. Senate. It is clear that the Congress has the power to regulate commerce, to raise and support armies, to lay and collect taxes, and to compel the attendance of absent members. It is equally clear that Congress and the U.S. Senate may not exercise those constitutional powers in a manner that violates other provisions of the Constitution. The Constitution must be read as a whole and no single constitutional provision must be allowed to override other guarantees within that document.

No one questions that the entire Senate has the power to compel the attendance of absent Members. No one should question either that the Senate may not do this without guaranteeing to the absent Senators full due process rights, the 5th and 14th amendments, full rights against seizure without warrants, the 4th amendment, full rights to be informed of the nature of the accusations against him, the 6th amendment, full rights against unusual punishments, the 8th amendment, and all the other rights protected by the entire body of the Constitution.

Due process prior to the deprivation of liberty entails many standards that were not met when Senator PACKWOOD was taken into custody. Due process requires evenhandedness and fairness to all. Fairness to all prevents use of constitutional powers to perpetrate a vendetta against any single group or political party. We refer to this in other contexts as selective prosecution. The requirements of fairness found in the due process clause argue strongly against the selective use of constitutional powers against one political party.

Beyond this, due process clearly requires strict attention to the procedural guarantees of the Constitution. The fourth amendment protects individuals and Senators against unreasonable searches and seizures. Seizures are patently unreasonable when ordered without a warrant issued by a neutral officer pursuant to probable cause.

Some have suggested that many of these protections only apply in criminal investigations and do not apply outside that context. Once again, the Senate is the sole arbiter of the question of the arrest of other Senators by the Sergeant at Arms, but the Supreme Court has specifically rejected the argument that fourth amendment protections are limited to criminal cases. In a case involving a routine administrative inspection, the Court ordered compliance with the fourth amendment in these terms: "It is surely anomolous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court* (1967).

I submit that if the Senate intends to seriously implement the protections of the Constitution, it must apply no less a standard than that applied by the Supreme Court. If the Supreme Court acknowledges that mere administrative inspections are subject to the fourth amendment, that standard must also apply to the more egregious use of constitutional power involved in bodily seizures and deprivations of personal liberty.

To return a moment to the fourth amendment in connection with the midnight raid, no warrant was issued for that arrest by a detached and impartial magistrate or nonpolitical officer. The need for such detached review of warrants for arrest have always been a hallmark of constitutional protection under due process and the fourth amendment. Once again, I would urge us to observe the language of the Supreme Court:

> If a * * * warrant be constitutionally required, the requirement cannot be flexibly interpreted to dispense with the rigorous constitutional restrictions for its issue. *Frank v. Maryland* (1959).

The Court has also said:

> * * * a search * * * is unreasonable unless it has been authorized by a valid search warrant. *Camara*, supra.

Issuance of a valid warrant requires many rigorous steps as the Court suggests. None is more important, however, than the necessity of issuance by a neutral nonpolitical officer. In the words of the Supreme Court:

> The Fourth Amendment's protection consists in requiring those inferences of probable cause to be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprize of ferreting out wrongdoing. *Johnson v. U.S.* (1948).

In the unfortunate heat of the midnite raid, no neutral officer was consulted. Instead those with the greatest political stake and the strongest political motivations issued the arrest order in the passion of the moment without detached review.

My time is short, but I might also suggest that if the arrest order was found by the Senate to be issued in a punitive fashion, then it may well be an "unusual punishment" violative of other constitutional guarantees. After all, midnight raids and excessive bodily force are hardly hallmarks of the American system of constitutional government.

Mr. President, we could probably continue this examination of these regretable events and find many more constitutional deficiencies in the means used to conduct the midnight raid on Senators. Even a single constitutional deficiency should not be tolerated by this body which was created primarily to resist the heat of moment and the passion of politics and, above all, to protect the Constitution. Yet we have found many reasons to consider the Senate's conduct gravely suspect.

In the first place, the power of article I, section 5, was misappropriated by the Senate when it was employed beyond its purpose of protecting the core functions of Congress. When article I, section 5, was exploited for political gamesmanship, the Senate may well have been acting on its own without the blessing of the Constitution.

Moreover, when that power was exercised in a manner that offended other constitutional guarantees, it clearly lost its propriety and legality. The Senate may not presume to exercise its constitutional powers unconstitutionally. It may not ignore due process by engaging in selectivity against particular parties or individuals. It may not ignore due process guarantees

or fairness. It may not ignore the forth amendment protections against unreasonable seizures. It may not ignore the requirement of warrants and neutral oversight of the issuance of warrants. It may not employ unusual punishments.

Accordingly, I propose that the Senate repeal the rule permitting the Sergeant at Arms to compel the attendance of Members by arresting them. Instead the Sergeant of Arms could be sent to request the attendance of Members, but no authority to arrest would be permitted.

Mr. President, we need to look closely at the Constitution. Article I, section 5 says that the Senate's power with respect to absent Members is to be exercised" in such manner and under such penalties as each House may provide." Thus, the Senate does not need to empower the Segeant at Arms to arrest Members, but may choose any number of other remedies to ensure Members attend sessions. The Senate may wish to suggest, by a vote after the fact, an ethics investigation for dereliction of duty in the event that a Senator ignores the Sergeant at Arms' request to come to the floor. Other remedies might be considered by the Senate if it became necessary, but arresting Senators without due process must never happen again.

This Senate stands as an example of how the Constitution must operate. If this body allows due process protections to be flaunted, I shudder to contemplate the example we have set. Once again, I am reluctant to relive the unfortunate events that may well be judged by history as one of the Senate's darkest hours. Nonetheless we cannot allow mistakes to be repeated. Our duty is to the Constitution. If it has been flaunted, we must make corrections, even if those corrections occur right here in the Senate.

Mr. D'AMATO. Mr. President, I will be brief. I support this amendment. More to the point, I support the point that my good friend from Pennsylvania is making in offering it.

That point, when all of the dramatics and legalities are set aside, is simply this: This Senate cannot operate, or be seen as operating, in this fashion. I say "be seen," Mr. President, because our example is as important as our action in this body. In this case, that example has been shoddy indeed.

I applaud the good grace and humour with which the Senator from Oregon has handled his unsolicited starring role in this affair. His approach, in my view, has helped at least to partially mitigate the damage this unfortunate and unnecessary episode has otherwise caused.

Likewise, Mr. President, I have nothing but admiration for the way the Sergeant at Arms of the Senate, Henry Giugni, conducted himself in this matter. Compelled by duty to be an instrumentality in this exercise, his tact, judgment, and personal sensitivity helped keep the operational aspects in a somewhat more appropriate perspective. He is to be commended.

Nevertheless, Mr. President, damage has been done. That damage has been done on two fronts, I believe; it has been done outside the Senate in terms of the quality of the example we set for the world, and it has been done here within this body, in how we deal with and feel about each other.

Outside the Senate, Mr. President, we have embarrassed ourselves, and reduced faith in and respect for what goes on here. The people who sent us here can be forgiven, I think, for wondering whether we are serious. What happens in a democracy, Mr. President, when those who govern are not taken seriously?

The other evening we looked like some kind of low comedy about a legislature in a banana republic. At a time when the free world is watching carefully our deliberations on an historic arms reduction agreement, and on a comprhensive trade bill. What kind of confidence can our allies have in light of this behavior?

They're looking for "advise and consent," and instead we present something more like "Mr. Smith meets the Marx Brothers".

The damage within the Senate is more difficult to quantify. Let me say, Mr. President, that I don't see this, as some may, as a purely Republican versus Democrat issue.

Although a loyal Republican, I do not consider myself a particularly partisan person. I have, I like to think, friends here on both sides of the aisle. That's the way it should be. That's the way things work around here, and it has long been my belief that that's the way they should work.

That bipartisanship is based on a fabric of trust, Mr. President. That trust is essential to our ability to function here under the pressures we do. It is that trust which is endangered when arrest warrants are issued, under authority that can be questioned and in circumstances where they are unnecessary; when those warrants—their own best evidence—are then destroyed; when only absent Senators from one party are subjected to arrest; and when a Member is brought to the floor via process that would not be adequate to apprehend a common criminal.

My friend from Pennsylvania, one of the Senate's ablest lawyers, has sought a procedural remedy by which to repair this. As an experienced counsel, he knows that procedural fairness is often the path to substantive justice.

But his resolution, Mr. President, is really a plea—a plea that this body reaffirm and abide by its commitment to fairness and civility, two values without which it cannot function. In the name of that fairness and civility, I urge its adoption by my colleagues.

Thank you, Mr. President.

The PRESIDING OFFICER. All time has expired.

## INTELLIGENCE OVERSIGHT ACT

The PRESIDING OFFICER (Mr. LAUTENBERG). Under the previous order, the Senate will now proceed to the consideration of S. 1721, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1721) to improve the congressional oversight of certain intelligence activities, and to strengthen the process by which such activities are approved within the executive branch, and for other purposes, which had been reported from the Committee on Intelligence, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

*That this Act may be cited as the "Intelligence Oversight Act of 1988".*

*SECTION 1. Section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422) is hereby repealed.*

*SEC. 2. Section 501 of title V of the National Security Act of 1947 (50 U.S.C. 413) is amended by striking the language contained therein, and substituting the following new sections:*

*"GENERAL PROVISIONS*

*"SEC. 501. (a) The President shall ensure that the Select Committee on Intelligence of the Senate and the Permanent Select Committee of the House of Representatives (hereinafter in this title referred to as the 'intelligence committees') are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activities, as required by this title: Provided, however, That nothing contained in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of such activities: And provided further, however, That nothing contained herein shall be construed as a limitation on the power of the President to initiate such activities in a manner consistent with his powers conferred by the Constitution.*

*"(b) The President shall ensure that any illegal intelligence activity is reported to the intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity.*

*"(c) The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of this title.*

*"(d) The House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of Congress under this title. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter re-*

*lating to intelligence activities requiring the attention of such House or such committee or committees.*

*"(e) Nothing in this Act shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.*

*"(f) As used in this section, the term 'intelligence activities' includes, but is not limited to, 'special activities,' as defined in subsection 503(e), below.*

*"REPORTING INTELLIGENCE ACTIVITIES OTHER THAN SPECIAL ACTIVITIES*

*"SEC. 502. To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall:*

*"(a) keep the intelligence committees fully and currently informed of all intelligence activities, other than special activities, as defined in subsection 503(e), below, which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and significant failures; and*

*"(b) furnish the intelligence committees any information or material concerning intelligence activities other than special activities which is within their custody or control, and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.*

*"PRESIDENTIAL APPROVAL AND REPORTING SPECIAL ACTIVITIES*

*"SEC. 503. (a) The President may authorize the conduct of 'special activities,' as defined herein below, by departments, agencies, or entities of the United States Government only when he determines such activities are necessary to support the foreign policy objectives of the United States and are important to the national security of the United States, which determination shall be set forth in a finding that shall meet each of the following conditions:*

*"(1) Each finding shall be in writing, unless immediate action by the United States is required and time does not permit the preparation of a written finding, in which case a written record of the President's decision shall be contemporaneously made and shall be reduced to a written finding as soon as possible but in no event more than forty-eight hours after the decision is made;*

*"(2) A finding may not authorize or sanction special activities, or any aspect of such activities, which have already occurred;*

*"(3) Each finding shall specify each and every department, agency, or entity of the United States Government authorized to fund or otherwise participate in any significant way in such activities: Provided, That any employee, contractor, or contract agent of a department, agency, or entity of the United States Government other than the Central Intelligence Agency directed to participate in any way in a special activity shall be subject either to the policies and regulations of the Central Intelligence Agency, or to written policies or regulations adopted by such department, agency or entity, to govern such participation;*

*"(4) Each finding shall specify whether it is contemplated that any third party which is not an element of, contractor or contract agent of, the United States Government, or is not otherwise subject to United States Government policies and regulations, will be used to fund or otherwise participate in any significant way in the special activity concerned, or be used to undertake the special activity concerned on behalf of the United States;*

*"(5) A finding may not authorize any action intended to influence United States political processes, public opinion, policies or media; and*

*"(6) A finding may not authorize any action that would violate any statute of the United States.*

*"(b) To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods, or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and entities of the United States Government involved in a special activity shall:*

*"(1) keep the intelligence committees fully and currently informed of all special activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government, including significant failures; and*

*"(2) furnish to the intelligence committees any information or material concerning special activities which is in the possession, custody or control of any department, agency, or entity of the United States Government and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities.*

*"(c)(1) Except as provided in subsections (2) through (4), below, the President shall ensure that any finding approved, or determination made, pursuant to subsection (a), above, shall be reported to the intelligence committees prior to the initiation of the activities authorized, and in no event later than forty-eight hours after such finding is signed or the determination is otherwise made by the President.*

*"(2) On rare occasions when time is of the essence, the President may direct that special activities be initiated prior to reporting such activities to the intelligence committees: Provided, however, That in such circumstances, notice shall be provided the intelligence committees as soon as possible thereafter but in no event later than forty-eight hours after the finding authorizing such activities is signed or such determination is made, pursuant to subsection (a), above.*

*"(3) When the President determines it is essential to meet extraordinary circumstances affecting vital interests of the United States, the President may limit the reporting of findings or determinations pursuant to subsections (1) or (2) of this section, to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. In such case, the President shall provide a statement of the reasons for limiting access to such findings or determinations in accordance with this subsection.*

*"(4) Notwithstanding the provisions of subsection (3) above, when the President determines it is essential to meet extraordinary circumstances affecting the most vital security interests of the United States and the risk of disclosure constitutes a grave risk to such vital interests, the President may limit the reporting of findings or determinations pursuant to subsections (1) or (2) of this section to the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. In such cases, the President shall provide a statement of the reasons explaining why notice to the intelligence committees is not being provided in accordance with subsection (c)(1), above. The President shall personally reconsider each week thereafter the reasons for continuing to limit such notice, and provide a statement to the Members of Congress identified herein above on a weekly basis, confirming his decision, until such time as notice is, in fact, provided the intelligence committees.*

*"(5) In all cases reported pursuant to subsections (c)(1), (c)(2), and (c)(3), above, a copy of the finding, signed by the President, shall be provided to the chairman of each intelligence committee. In all cases reported pursuant to subsection (c)(4), a copy of the finding, signed by the President, shall be shown to the Members of Congress identified in such subsection at the time such finding is reported.*

*"(d) The President shall ensure that the intelligence committees, or, if applicable, the Members of Congress specified in subsection (c), above, are notified of any significant change in a previously-approved special activity, or any significant undertaking pursuant to a previously-approved finding, in the same manner as findings are reported pursuant to subsection (c), above.*

*"(e) As used in this section, the term 'special activity' means:*

*"(1) any operation of the Central Intelligence Agency conducted in foreign countries, other than activities intended solely for obtaining necessary intelligence; and*

*"(2) to the extent not inconsistent with subsection (1), above, any activity conducted by any department, agency, or entity of the United States Government in support of national foreign policy objectives abroad which is planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activity, but which does not include diplomatic activities or the collection and production of intelligence or related support activities".*

*SEC. 3. Section 502 of title V of the National Security Act of 1947 (50 U.S.C. 414) is redesignated as section 504 of such Act, and is amended by deleting the number "501" in subsection (a)(2) of such section and substituting in lieu thereof "503"; and is further amended by adding the following new subsection (d):*

*"(d) No funds appropriated for, or otherwise available to, any department, agency, or entity of the United States Government, may be expended, or may be directed to be expended, for any special activity, as defined in subsection 503(e), above, unless and until a Presidential finding required by subsection 503(a), above, has been signed or otherwise issued in accordance with that subsection.".*

*SEC. 4. Section 503 of title V of the National Security Act of 1947 (50 U.S.C. 415) is redesignated as section 505 of such Act.*

The Senate proceeded to consider the bill.

## ORDER OF PROCEDURE

Mr. BYRD. Mr. President, while awaiting the managers of the bill to come to the floor, I have discussed with the distinguished acting Republican leader, Mr. SIMPSON, the schedule for the rest of the day, and tomorrow.

I would hope that before the Senate completes its business on tomorrow, the Senate could complete action on the pending measure, the intelligence authorization bill. And there is a nomination on the calendar which the Senate should be able to dispose of. I would also like to lay down the Price-Anderson legislation, the House bill.

Whether the Senate completes that action today or tomorrow is equally all right with me. I do not know how many amendments may be called up, and offered to the intelligence authorization bill. If there are a great number, of course it is obvious that the Senate would not be able to complete action on that matter today. If there are not many, or not any, it is quite possible that the Senate could complete action on that bill today, and have a rollcall on the nomination; and, I would like to lay down the Price-Anderson bill, and that is it. We could go out.

But that all depends on whether or not all of those objectives can be achieved. So, Mr. President, I suggest the absence of a quorum hoping that the managers will come to the floor promptly.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## THE CALENDAR

Mr. BYRD. Mr. President, while awaiting the arrival of the managers there is a little morning business that may be transacted.

I inquire of the distinguished leader on the other side of the aisle whether or not Calendar Order No. 510 on the calendar of business has been cleared.

Mr. SIMPSON. Mr. President, that has been cleared for processing on this side of the aisle.

Mr. BYRD. I thank my friend.

## TRUCK AND BUS SAFETY ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 510.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 861) to require certain actions by the Secretary of Transportation regarding certain drivers of motor vehicles and motor carriers, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That this Act may be cited as the "Truck and Bus Safety Act of 1987".

SEC. 2. As used in this Act, the term—

(1) "driver" has the meaning given to such term in section 390.11 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act; and

(2) "motor carrier" has the meaning given to such term in section 390.15 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

SEC. 3. (a) Except as provided in subsection (b) of this section, not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall, by regulation, amend the regulations contained in parts 390, 391, 392, 393, 396, and 397 of title 49, Code of Federal Regulations, to include within such regulations those motor carriers and drivers operating wholly within a municipality or the commercial zone of a municipality (as defined in part 1048 of title 49, Code of Federal Regulations).

(b) The Secretary shall not apply the provisions of section 391.41 (other than the provisions of section 391.41(b) (12) and (13)) of title 49, Code of Federal Regulations, to any driver operating wholly within a municipality or the commercial zone of a municipality—

(1) who drove exclusively within such municipality or zone for a period of 1 year before the date of enactment of this Act,

(2) who was not subject to the provisions of section 391.41(a) and (b)(1) through (11) of title 49, Code of Federal Regulations, during such period,

(3) to whom a license to drive has been issued on or before the date of enactment of this Act, and

(4) who has received a waiver from the Secretary under subsection (c) of this section.

(c) After notice and opportunity for public comment, the Secretary shall waive, in whole or in part, application of any provision of section 391.41 (other than the provisions of section 391.41(b) (12) and (13)) of title 49, Code of Federal Regulations, to any driver who has not been shown to have unsafely operated wholly within a municipality or the commercial zone of a municipality, for such time as such driver continues to safely operate wholly within a municipality or the commercial zone of a municipality, if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

SEC. 4. (a) Not later than 3 months after the date of enactment of this Act, the Secretary shall initiate rulemaking proceedings on the need to adopt methods for improving safety with respect to compliance by drivers with hours of service regulations, including vehicle onboard monitoring devices in trucks to record speed, driving time, and other information. Any rule which the Secretary determines to promulgate as a result of such proceedings regarding such devices shall ensure that such devices are not used for the purpose of harassment of any driver, but such devices may be used for the purpose of monitoring the productivity of any driver. The Secretary shall conclude the proceedings required by this subsection not later than 1 year after the date of enactment of this Act.

(b) The Secretary shall transmit to Congress not later than September 30, 1988, a report on the need to adopt methods for improving braking performance standards for trucks and truck trailers, including in such report an examination of available information and data on antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing.

(c) Not later than October 31, 1988, each of the appropriate authorizing committees of the Congress shall conduct an oversight hearing to obtain public testimony on the report required under subsection (b) of this section.

(d) The Secretary shall initiate rulemaking proceedings not later than December 1, 1988. Such rulemaking proceedings shall concern the need to adopt methods for improving braking performance standards for trucks and truck trailers and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to promulgate as a result of such proceedings regarding improved braking performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceedings required by this subsection not later than September 30, 1989.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, I congratulate the sponsors of S. 861—Senators ADAMS and DANFORTH, along with the chairman of the Surface Transportation Subcommittee, Senator EXON—for their diligent efforts to craft this important safety legislation and bring it to the Senate floor.

Right to the point, this legislation will save American lives by improving the overall safety performance of our motor carriers. I want to make it absolutely clear that the Commerce Committee stands foursquare for safety. There can be no compromise or retrenchment when it comes to the protection of life. Our paramount function is to provide for the safety of our citizens—on the highways, on the Nation's rail system, and in the skies. S. 861, the Truck and Bus Safety Act of 1988, is one example of how our committee—and, I hope, the entire Congress—will turn this commitment into action.

The Truck and Bus Safety Act of 1988 is an excellent piece of legislation that will accomplish three aims. First, it will close a loophole in Federal regulations that currently allows unsafe drivers and vehicles to operate within metropolitan areas. Second, it will require the Department of Transportation to study ways to improve compliance by drivers with hours of service regulations. And finally, the bill will require DOT to report to Congress by the end of the current fiscal year on

methods of improving truck brake performance.

The accomplishment of the three basic goals associated with this legislation—getting more unsafe motor carriers and drivers off the road, preventing safety hazards associated with driver fatigue, and improving safety technology—will save lives. It's that simple, Mr. President.

*Salus populi suprema lex*—the people's safety is the highest law. And we are derelict in our duty as public servants so long as we do not ensure that the protection of innocent lives is our first priority. It is with this in mind that I urge my colleagues to give S. 861 their overwhelming approval.

Mr. ADAMS. Mr. President, every year, there are over 5,500 deaths and 175,000 injuries from truck accidents. With over 1 million trucks on our Nation's highways, Congress has a continuing duty to ensure the safest transportation system possible. This is why Senator DANFORTH and I introduced the Truck and Bus Safety Act of 1987.

As a recent editorial put it: "One look in the rear view mirror on a rainy day is enough to convince most Americans that tractor-trailer trucks need the most advanced brake technology available." The bill that is before the Senate would substantially further this effort.

The Truck and Bus Safety Act would enhance truck safety in three principal areas.

First, it would require the Department of Transportation to take up the issue of truck brake standards and consider rulemaking alternatives. Brakes are the No. 1 equipment problem on trucks today. In a recent study of heavy trucks, DOT has estimated that brake performance may be involved as a contributing factor in up to one-third of all truck accidents. One way to improve truck brakes and reduce the number and severity of highway accidents is to use antilock brake technology. Antilock brakes work. Tests and experience show that antilock brakes stop vehicles in shorter distances even under the worst road conditions.

Ten years ago, when I was Secretary of Transportation, we tried to require America's truck owners to install antilock brakes, then a relatively new technology. That effort failed. In the meantime, other nations, particularly those in Europe, have pressed ahead, refining and now requiring antilock and other advanced brake technology on heavy trucks. It is time we caught up here in the United States.

Let me point out that this bill does not immediately mandate the installation of antilock brakes on all trucks. Since the bill was initially introduced, we have worked hard with the trucking industry, safety advocates and employee groups to craft a bill that all interested parties can support. To encourage the continuation of cooperative research efforts between industry and DOT on truck brake research, DOT would be required to submit a report to Congress by September 30, 1989 on methods to improve truck brake performance. This report would reflect the current state of DOT's research and testing efforts and would be the basis for a rulemaking proceeding, to begin no later than December 1, 1989. While the legislation requires rulemaking, it does not prejudge the outcome. Rules to require antilock brakes would be required, however, if they would meet the need for motor vehicle safety, and would be reasonable and practicable.

The second area that this bill addresses is driver fatigue. Tired drivers are unsafe drivers and, unfortunately, too many truckers are driving 14, 16, 18 hours at a stretch. Truckers are under enormous financial pressure, in part a result of deregulation of the industry. The drive to cut costs has heightened the pressure to violate Federal hours of service regulations, which limit drivers to 10 hours at a stretch or 60 hours in any week.

The log book system used to enforce the hours of service regulations has become so permeated with abuse that these logs are commonly referred to in the trade as "comic books". Computerized, on-board monitors are now available in the market which would provide a more accurate and more easily enforced way to keep track of drivers' hours. This legislation requires the Department of Transportation to investigate the installation of on-board monitors, or black boxes, to improve compliance with the hours of service regulations.

This legislation also eliminates the so-called commercial zone exemption from the Federal Motor Carrier Safety Regulations. It might interest my colleagues to know that while Federal regulations establish minimum safety standards for trucks and drivers on our highways, these regulations do not apply to dense traffic in and around some of our Nation's largest cities. Washington, DC's beltway is a commercial zone, as are New York City, Boston, Chicago, Pittsburgh and Seattle. Exempting these commercial zones from safety regulations is completely without justification. There is no reason why a westbound truck with bald tires and faulty brakes, outlawed on rural Interstate 90, should suddenly become legal when the driver arrives within sight of the Seattle Space Needle.

These three specific changes are steps in improving highway safety. They should be only a beginning, however, in our continuing struggle to stop the frightening carnage occurring daily on our Nation's highways. I urge my colleagues to support the Truck and Bus Safety Act of 1987.

Mr. EXON. Mr. President, I am pleased the leadership has scheduled time for consideration of S. 861, the Truck and Bus Safety Act of 1988. As chairman of the Surface Transportation Subcommittee, I want to commend the members of the Senate Commerce Committee for this effort to improve the safety of truck and bus transportation in the United States. The Surface Transportation Subcommittee held a hearing on this legislation in July of last year. Prior to and since that hearing, this legislation has been a bipartisan effort that seeks to benefit all members of the motoring public.

This legislation was introduced by the ranking minority member of the Commerce Committee, Senator DANFORTH, along with Senator ADAMS, and addresses several safety related issues affecting motor carrier transportation.

First and foremost, the Truck and Bus Safety Act of 1988 would eliminate the commercial zone exemption from the Federal Motor Carrier Safety Regulations. This loophole has allowed some unsafe drivers and vehicles to operate in metropolitan areas known as commercial zones without meeting driver qualifications and equipment requirements imposed on other drivers and vehicles traveling in interstate commerce. Often, the areas these zones comprise are those with the greatest traffic congestion and therefore the greatest potential accident scenarios.

The members of this committee feel strongly that safety has been compromised by this loophole and that the time has run out on this exemption.

Second, this legislation requires the Department of Transportation to initiate a rulemaking proceeding on the need to adopt methods to improve compliance by drivers with hours of service regulations. A report issued in September of last year by the Insurance Institute for Highway Safety indicates that drivers at the wheel for more than 8 hours at a stretch are nearly twice as likely to be involved in a crash as drivers who have been at the wheel less than 2 hours. Since there are onboard monitoring devices available to curb the abuses of driving longer periods than the current regulations allow, I believe these devices should be carefully examined by DOT—with an eye toward their potential to increase fuel efficiency, reduce speeding, and facilitate billing, as well as substantially curtail violations of hours of service requirements.

Third, this legislation requires DOT to report to Congress by September 30, 1988, on methods of improving truck brake performance. Issues covered in the report are to include compatibility between tractor brakes and

trailer brakes, uniform manufacturing labeling of replacement brake parts, and antilock braking systems. Additionally, the report should assess the European experience with antilocks where widespread use of these systems has occurred since 1982.

I am committed to working with Senators DANFORTH and ADAMS; the chairman of the Commerce Committee, Senator HOLLINGS, and others to ensure passage of this legislation. It is also my intention to continue working to encourage improved motor carrier related technology as well as driver and vehicle performance standards in an effort to achieve greater levels of motor carrier safety.

Mr. DANFORTH. Mr. President, over the last 4 years the Congress has made great strides in improving truck and bus safety. I am proud to have been associated with this effort. I authored the Motor Carrier Safety Act of 1984 (Public Law 98-554), which requires that trucks and buses pass a safety inspection at least once a year. The 1984 act also requires that the Department of Transportation [DOT] develop a system for rating the safety fitness of motor carriers. Carriers with unsatisfactory ratings are to be prohibited from operating until they take remedial action.

Mr. President, in 1986 I authored another bill that should greatly improve truck and bus safety, the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570). That legislation prohibits drivers from using a wallet full of licenses to spread bad driving records. In addition, it eliminates the 20-State practice of giving commercial licenses to applicants who may have taken a driving test in nothing more than a subcompact car. It also increases the funding for roadside inspections of trucks and buses. Finally, it establishes stiff license suspension penalties for commercial drivers caught operating under the influence of drugs or alcohol.

We have made progress, but even with the new legislation there are a number of truck and bus safety problems that still need to be addressed. Over 5,000 Americans are being killed annually in heavy truck and bus accidents. You can hardly pick up a newspaper or turn on a television without seeing a report of a serious truck or bus accident.

Mr. President, we need to do more to prevent these accidents. For this reason, I introduced with Senator ADAMS the Truck and Bus Safety Act of 1987, S. 861. I am pleased that Senator ADAMS joined me as the primary cosponsor of this legislation. As a former Secretary of Transportation, he is well acquainted with the truck and bus safety problem.

On November 19, 1987, the Commerce Committee ordered, without opposition, that S. 861 be reported. I am glad that the full Senate is acting on this important bill. S. 861 addresses three truck and bus safety problems that contribute to the highway death toll.

ELIMINATING THE COMMERCIAL ZONE EXEMPTION

Mr. President, our bill would eliminate the commercial zone exemption from the Federal Motor Carrier Safety Regulations [FMCSR]. The FMCSR establish minimum qualification requirements for all commercial drivers and commercial equipment that travel in interstate commerce. These requirements do not apply to drivers in hundreds of metropolitan areas known as commercial zones.

This exemption may have made sense when it was created in 1935, but today it is a big safety loophole. In 1935, local truck operations were limited, drivers operated within a few miles of their home bases, and speeds and traffic volumes were relatively low. Today, many exempt trucks and drivers are operating in metropolitan areas that are crisscrossed by high speed, heavily traveled highways.

Washington, DC's Capital Beltway is an example of one of these commercial zones. According to the American Trucking Associations, approximately 120,000 vehicles pass a given point on the Capital Beltway each day. About 12,000 of these are commercial vehicles and they are involved in more than 11 percent of the accidents on the Capital Beltway. These accident figures are not surprising. A report by the Office of Technology Assessment found that commercial vehicles operating solely within commercial zones are more likely to be in violation of safety standards than other commercial vehicles. Other examples of exempt commercial zones include Boston, Chicago, Indianapolis, New York, Pittsburg, Seattle, as well as Kansas City and St. Louis in my home State of Missouri.

Mr. President, S. 861 would close this loophole by requiring that all interstate commercial drivers and equipment comply with Federal safety regulations.

CONTROLLING HOURS OF SERVICE ABUSE

Under existing Federal safety regulations, commercial drivers are not supposed to drive more than 10 hours at a stretch or 60 hours a week. Many drivers exceed these limits because of economic pressures. Drivers who ignore these limits are likely to become fatigued. This can present safety problems. An Insurance Institute for Highway Safety study released on September 16, 1987, indicates that drivers at the wheel for more than 8 hours at a stretch are nearly twice as likely to be involved in a crash as drivers who have been at the wheel less than 2 hours.

Currently, drivers are required to record their driving time in logbooks. Some drivers cynically refer to these logbooks as comic books because there is widespread falsification of these records. Some cheaters keep two sets of driving records, others simply make up fictitious numbers. For example, the Federal Government conducted 18,966 safety inspections in 1984. Twenty-four percent of these inspections revealed hours of service violations, including trucks with no logs, incorrect logs, and related violations. State inspections show similar problems. Tennessee conducted 15,000 truck inspections in the first 6 months of 1986. One-third of the drivers Tennessee checked had no logbooks or had incorrect logbooks.

An alternative to the ineffective logbook system is the onboard recorder. These monitoring devices are capable of mechanically or electronically recording driver and equipment performance, including driving time and speed. It is widely thought that these devices have the potential to increase fuel efficiency, reduce speeding, and facilitate billing, as well as substantially curtail violations of hours of service requirements. The Europeans have used tachographs, a mechanical type of recorder, since the 1930's. Since 1971, European Common Market countries have required heavy commercial vehicles to have a tachograph. A number of U.S. companies are using tachographs, and others are using onboard computers as recorders.

Mr. President, our bill would require DOT to conduct a rulemaking on the need for onboard recorders to improve truck drivers' compliance with hours of service rules.

IMPROVING TRUCK BRAKES

Mr. President, our bill would also seek to improve truck braking performance. In March 1987, DOT completed a congressionally ordered study of truck braking performance. The study concluded that among all vehicle-related topics, efforts to improve truck brake systems should receive the highest priority. The study estimated that brake system performance could be involved as a contributing factor in up to one-third of all truck accidents.

A number of safety groups believe that a major method of improving truck braking performance would be the use of antilock braking systems. An antilock system prevents sustained lockup of any wheel under its control. Without antilock, a driver who tries to brake his vehicle too quickly faces the problems of jackknifing and steering loss.

DOT wrote a rule requiring antilock brakes in 1975. There were complaints about failures of the antilock brakes available at that time. As a result, the antilock requirement was struck down by the courts in 1978.

In the intervening years, a new generation of antilock brakes that work

very well has been developed. This new generation of antilocks is widely used in Great Britain and on the European continent. Approximately 80 percent of all new truck trailers over 20,000 pounds sold in the United Kingdom since 1982 have antilock brakes. Last December, the nations of the European Economic Community agreed to require antilock brakes on all new tractors and trailers registered after October 1991. Austria already requires antilock brakes on hazardous materials trucks.

Mr. President, our bill would direct DOT to report to Congress by September 30, 1988 on the need to adopt methods for improving truck braking performance. The report would cover issues including antilock systems, brake compatibility, and effective brake timing. In addition, by October 31, 1988, the relevant congressional authorizing committees would be required to conduct oversight hearings to obtain public testimony on the report. Finally, DOT would have to commence a rulemaking no later than December 1, 1988, to be completed by September 30, 1989, on the need to adopt methods for improving truck braking performance.

CONCLUSION

Mr. President, I urge all my colleagues to support this important truck and bus safety legislation.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the committee amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is Shall it pass?

So the bill (S. 861), as amended, was passed, as follows:

S. 861

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

That this Act may be cited as the "Truck and Bus Safety Act of 1987".

SEC. 2. As used in this Act, the term—

(1) "driver" has the meaning given to such term in section 390.11 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act; and

(2) "motor carrier" has the meaning given to such term in section 390.15 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this Act.

SEC. 3. (a) Except as provided in subsection (b) of this section, not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall, by regulation, amend the regulations contained in parts 390, 391, 392, 393, 396, and 397 of title 49, Code of Federal Regulations, to include within such regulations those motor carriers and drivers operating wholly within a municipality or the commercial zone of a municipality (as defined in part 1048 of title 49, Code of Federal Regulations).

(b) The Secretary shall not apply the provisions of section 391.41 (other than the provisions of section 391.41(b) (12) and (13)) of title 49, Code of Federal Regulations, to any driver operating wholly within a municipality or the commercial zone of a municipality—

(1) who drove exclusively within such municipality or zone for a period of 1 year before the date of enactment of this Act,

(2) who was not subject to the provisions of section 391.41 (a) and (b)(1) through (11) of title 49, Code of Federal Regulations, during such period,

(3) to whom a license to drive has been issued on or before the date of enactment of this Act, and

(4) who has received a waiver from the Secretary under subsection (c) of this section.

(c) After notice and opportunity for public comment, the Secretary shall waive, in whole or in part, application of any provision of section 391.41 (other than the provisions of section 391.41(b) (12) and (13)) of title 49, Code of Federal Regulations, to any driver who has not been shown to have unsafely operated wholly within a municipality or the commercial zone of a municipality, for such time as such driver continues to safely operate wholly within a municipality or the commercial zone of a municipality, if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

SEC. 4. (a) Not later than 3 months after the date of enactment of this Act, the Secretary shall initiate rulemaking proceedings on the need to adopt methods for improving safety with respect to compliance by drivers with hours of service regulations, including vehicle onboard monitoring devices in trucks to record speed, driving time, and other information. Any rule which the Secretary determines to promulgate as a result of such proceedings regarding such devices shall ensure that such devices are not used for the purpose of harassment of any driver, but such devices may be used for the purpose of monitoring the productivity of any driver. The Secretary shall conclude the proceedings required by this subsection not later than 1 year after the date of enactment of this Act.

(b) The Secretary shall transmit to Congress not later than September 30, 1988, a report on the need to adopt methods for improving braking performance standards for trucks and truck trailers, including in such report an examination of available information and data on antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing.

(c) Not later than October 31, 1988, each of the appropriate authorizing committees of the Congress shall conduct an oversight hearing to obtain public testimony on the report required under subsection (b) of this section.

(d) The Secretary shall initiate rulemaking proceedings not later than December 1, 1988. Such rulemaking proceedings shall concern the need to adopt methods for improving braking performance standards for trucks and truck trailers and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to promulgate as a result of such proceedings regarding improved braking performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceedings required by this subsection not later than September 30, 1989.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## H.R. GROSS POST OFFICE BUILDING

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to consideration of H.R. 3689.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3689) to designate the U.S. Post Office Building located at 300 Sycamore Street in Waterloo, IA, as the "H.R. Gross Post Office Building."

The Senate proceeded to consider the bill.

Mr. BYRD. Mr. President, I served in the House when H.R. Gross was a Member of the House of Representatives. He was a great Representative, and a great American. He was what we sometimes refer to in West Virginia parlance as a "watchdog."

He was on that floor all the time, and it was an amazing thing how he seemed to know the contents of every bill that was called up in the House of Representatives. And in many instances H.R. Gross would ask questions. He was there to protect the interests and the rights of his people, and I shall always remember him as long as I live. He was tough, he was fair, he was alert, and on the job.

I am glad to see the U.S. Post Office Building in Waterloo, IA, being designated the H.R. Gross Post Office Building.

I am happy to be a Member of the Senate at this time, when the Senate is proceeding to consider that measure, naming that building in his honor.

Mr. SIMPSON. Mr. President, may I add a note? When my father was a Member of the Senate, he introduced me to H.R. Gross. Representative Gross was all the things the majority leader describes—a persistent and dogged man. He was much like Senator Williams, of Delaware. He was the House version of that remarkable man.

19-059 O-89-3 (Pt. 3)

One of the interesting anecdotes about Representative Gross was that he always loved to number one of his bills H.R. 144, which was a "Gross" number. He was particularly fond of that. He had a great sense of humor, too, as the majority leader knows.

I certainly join the majority leader in his remarks. This is a fine tribute.

Mr. HARKIN. I raise today to support the legislation formally naming the Post Office Building in Waterloo, IA, for our distinguished colleague, H.R. Gross. Congressman Gross, who served the Third District of Iowa from 1948 through 1972, is very deserving of this honor.

I first met Congressman Gross in 1962 when I was an intern in the other body. During the years that followed, I was always impressed with the hard work and dedication which marked H.R. Gross' terms in office. H.R. always stuck by his high principles. He embodied some of the best aspects of what it means to be a representative of the people. He was a man of high integrity and sought to serve the best interest of Iowa.

It is indeed appropriate that we name a post office after Congressman Gross. As the former ranking member of the Post Office and Civil Service Committee, H.R. gained the reputation of the "conscience of the House." While I may not have always agreed Congressman's votes or the way he stood on issues, I can say this: H.R. Gross' demeanor and his approach were always that of a gentleman. I had a lot of respect for H.R. Gross and urge the adoption of this legislation.

Mr. GRASSLEY. Mr. President, I want to thank the majority leader and the acting Republican leader for bringing up H.R. 3689 which will name the Post Office Building in Waterloo, IA, for H.R. Gross.

On September 22, 1987 America lost one of its finest people.

Former Congressman H.R. Gross, who represented the Third Congressional District in Iowa for 26 years, died at the age of 88.

On December 1, 1987, I introduced S. 1909 which would name the Post Office Building after H.R. I stated than that: "While serving in Congress, Gross led the fight to hold Government spending down. His work gave him the reputation of being the watchdog of the Federal Treasury." Some have estimated that he saved our Government millions, perhaps billions of dollars that would have gone unchecked for boondoggles, bad spending or just pure waste. The statement in the front room of his office stated it best—"Nothing is easier than the expenditure of public money. It does not appear to belong to anybody. The temptation is overwhelming to bestow it on somebody."

Gross combined his concern for the budget with his wry sense of humor when he introduced H.R. 144. The title of the bill was a play on words "HR" being the name he went by as well as standing for House of Representatives and 144 being the number of units in a gross. Gross introduced this year, every year for over a decade.

The bill would require the Federal budget to be balanced except in times of war or national emergency and would earmark up to 5 percent of the Government's net annual revenue for reduction of the national debt. He once stated, "There is no fiscal or monetary discipline. And there will be a day of accounting. I fear there can be a lethal result that will be the loss of our system of government. We are getting ripe for a demagogue."

Gross studied every line of every bill that came to the House floor. He would spend long days in the office and would be on the floor of the House during each legislative session. He was always ready to jump up and attack any bill that he felt wasted taxpayer's dollars. A skilled parliamentarian, Gross used the House rules to kill many special interest bills. Gross' reputation as a champion of taxpayer's money, insured him a role in major pieces of legislation. Committee chairman would clear their bills with H.R., to insure objections weren't raised against their legislation. The chairmen would occasionally rewrite their bills to evade the objections of H.R. Gross.

Mr. President, it has been said that if the House of Representatives didn't have an H.R. Gross, they would have to invent one.

I had the privilege of following Mr. Gross in representing Iowa's Third District. I am very proud to have had that opportunity. There were many things we could all learn from H.R. Gross. If we all had the drive to hold down the Federal spending like H.R., we would not be faced with the problems we have today.

I also want to thank Congressman NAGLE for shepherding this bill though the other body.

I appreciate the Senate passing this bill naming the new U.S. Post Office Building in Waterloo, IA after H.R. Gross.

The bill was ordered to be read a third time, was read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## PRINTING OF "DEVELOPMENTS IN AGING: 1987"

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of Senate Concurrent Resolution 98, authorizing the printing of the annual 3-volume report, "Developments in Aging: 1987" prepared by the Special Committee on Aging, and I ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objections, it is so ordered.

The concurrent resolution will be stated by title.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 98) to authorize the printing of the annual 3-volume report "Developments in Aging: 1987," prepared by the Special Committee on Aging.

The concurrent resolution was considered and agreed to, as follows:

S. CON. RES. 98

*Resolved by the Senate (the House of Representatives concurring),* That there be printed as a Senate document "Developments in Aging: 1987", a three volume report, as prepared by the Special Committee on Aging of the Senate.

SEC. 2. Such document shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Special Committee on Aging.

SEC. 3. There shall be printed 3,000 copies of volume I of the report, 1,000 copies of volume II of the report, and 5,000 copies of volume III of the report.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## STAR PRINT OF S. 2104

Mr. BYRD. Mr. President, I ask unanimous consent that there be a star print of S. 2104, the text of which I send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROVIDING FOR A CONDITIONAL ADJOURNMENT OF THE SENATE

Mr. BYRD. Mr. President, I send to the desk a concurrent resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 101) providing for a conditional adjournment of the Senate from March 3, or 4, 1988, until March 14, 1988.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

Mr. BYRD. Mr. President, I am authorized by the distinguished acting Republican leader, Mr. SIMPSON, to proceed with this resolution at this time.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 101) was agreed to, as follows:

S. CON. RES. 101

Providing for a conditional adjournment of the Senate from March 3, or 4, 1988 until March 14, 1988.

*Resolved by the Senate (the House of Representatives concurring),* That when the Senate adjourns at the close of business on Thursday, March 3, 1988 or on Friday, March 4, 1988, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12 noon on Monday, March 14, 1988, or until 12 o'clock meridian on the second day after the Members are notified to reassemble pursuant to section 2 of this resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate, after consultation with the Minority Leader of the Senate, shall notify the Members of the Senate to reassemble whenever, in his opinion, the public interest shall warrant it.

## COMMITTEE REFERRAL OF LEGISLATION CONCERNING NATIONAL SCIENCE FOUNDATION

Mr. BYRD. Mr. President, I ask unanimous consent that any legislation providing authorization of appropriations for the National Science Foundation be referred in the first instance to the Committee on Labor and Human Resources, and if such legislation is reported by the committee, or if the Committee on Labor and Human Resources reports legislation providing authorization of appropriations for the National Science Foundation as an original bill from that committee, that legislation be sequentially referred to the Committee on Commerce, Science, and Transportation for a period of not to exceed 30 calendar days, not to include days when the Senate is not in session, for the purpose of such committee considering matters relating to the National Science Foundation's scientific and engineering research and related activities, and antarctic and special foreign currency programs, including the programs and types of programs, as well as similar initiatives to be undertaken in the future in these programs and types of programs that were included in the categories specified in section 2(A)(1) through (8) of Public Law 99-383.

If such legislation has not been reported by the Committee on Commerce, Science, and Transportation by the end of such 30-day period, I ask unanimous consent that such committee be automatically discharged from further consideration of the legislation, and that the legislation be placed on the Senate calender.

I further ask unanimous consent that, in the consideration of committee amendments to such legislation, amendments reported by the Committee of Labor and Human Resources shall be considered first, and that thereafter, amendments that may have been reported by the Committee on Commerce, Science, and Transportation shall be considered before other amendments, and that the bill as amended by such committee amendments be considered as original text for the purpose of further amendment.

In addition, I further ask unanimous consent that two conferees from the Committee on Commerce, Science, and Transportation be appointed, one majority and one minority, should a conference with the House of Representatives be required on such legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, today there is proposed an important unanimous-consent agreement regarding Senate jurisdiction over bills to authorize appropriations for the National Science Foundation [NSF]. This agreement has been reached by the Committee on Labor and Human Resources and the Committee on Commerce, Science, and Transportation. I recommend that the Senate approve the proposed agreement, and I want to express my appreciation to the chairman and ranking member of the Commerce Committee, Senators HOLLINGS and DANFORTH, for their cooperation in arriving at this agreement.

Mr. HOLLINGS. Mr. President, I take this opportunity to thank the distinguished chairman of the Labor and Human Resources Committee for his leadership and courtesy in this matter. Both are very much appreciated. I also want to commend Senators HATCH and DANFORTH. The NSF agreement that Senator KENNEDY and I are proposing today is based on the arrangement that these two Senators worked out in the last Congress.

Mr. President, I also take this opportunity to explain the provisions of this agreement to our colleagues. Under the terms of this agreement, three of the four parts of each NSF authorization bill would, after the Labor Committee files its report on the legislation, be sequentially referred to the Commerce Committee for a period not to exceed 30 calendar days, not to include days when the Senate is not in session. Since the current NSF authorization bill (S. 1632) has already been reported by the Committee on Labor and Human Resources, this year the 30-day sequential referral to the Committee on Commerce, Science, and Transportation shall commence when the Senate approves this unanimous-consent agreement.

The first of the three parts to be sequentially referred to the Commerce Committee consists of what the Foundation's budget currently calls "research and related activities." This category includes the research programs of the Foundation, now divided among five research directorates, as well as the programs and activities of what are now called "scientific, technological, and international affairs" and "program development and management." The second and third parts to be referred sequentially to the Commerce Committee are the programs and activities dealing with U.S. Antarctic operations and special foreign currency. I want to emphasize that the fourth component of National Science Foundation authorizations—currently called "science and engineering education"—is to remain solely within the jurisdiction of the Labor Committee. The Commerce Committee is well aware of the expertise of the Labor Committee with respect to this particular component of the National Science Foundation.

Mr. KENNEDY. Mr. President, the Senator's interpretation of the proposed agreement is correct. It is our intention that those portions of current and future NSF authorization bills dealing with these three subjects, including new initiatives in the three areas, would be sequentially referred to the Commerce Committee, even if formal budget or program categories are changed. However, as the Senator said, all current activities in the science and engineering education area, and all related future activities in this area, would remain solely within the jurisdiction of the Committee on Labor and Human Resources.

Mr. HOLLINGS. I thank the distinguished chairman of the Labor Committee.

Mr. President, I would mention two other features of the proposed agreement. First, under this proposal any committee amendments from the Labor Committee would have first precedence in any floor debate on an NSF authorization bill. Commerce Committee amendments would come second. The bill as amended by such committee amendments would be considered as original text for the purpose of further amendment.

Second, in the event of a conference between the Senate and House of Representatives concerning an NSF authorization bill, the Chair is to appoint from the membership of the Commerce Committee two conferees, one majority member and one minority member. I emphasize that this provision does not limit in any way the number of Labor Committee conferees that may be appointed.

Mr. KENNEDY. The Senator is correct in his interpretation of these two features of the proposed UC agreement.

Mr. HOLLINGS. I thank the Senator.

In closing, Mr. President, I believe that this agreement is in the best interests of both committees and will guarantee that the Senate maintains a strong voice in authorization decisions regarding the National Science Foundation.

## EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask the distinguished Republican leader if the four nominations that appear on page 4 of the Executive Calendar, calendar orders numbered 540 through 543, inclusive, have been cleared on his side of the aisle.

Mr. SIMPSON. Mr. President, those items on the calendar, numbered as the majority leader has indicated, have been cleared.

Mr. BYRD. I thank the distinguished Senator.

Mr. President, I ask unanimous consent that the Senate go into executive session to consider the aforementioned nominations; that they be considered en bloc, confirmed en bloc, the motion to reconsider en bloc be laid on the table; that the President be immediately notified of the confirmation of the nominations; that the nominations appear severally in the RECORD; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

SECURITIES INVESTOR PROTECTION CORPORATION

Frank G. Zarb, of New York, to be a Director of the Securities Investor Protection Corporation for a term expiring December 31, 1989, vice James W. Fuller, term expired.

DEPARTMENT OF COMMERCE

Paul Freedenberg, of Maryland, to be Under Secretary of Commerce for Export Administration (New Position)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mark E. Buchman, of California, to be President, Government National Mortgage Association, vice Glenn R. Wilson, Jr., resigned.

BARRY GOLDWATER SCHOLARSHIP and EXCELLENCE IN EDUCATION FOUNDATION

Howard W. Cannon, of Nevada, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term of four years. (New Position)

CONFIRMATION OF HOWARD W. CANNON TO BARRY GOLDWATER FOUNDATION

Mr. REID. I would like to take this opportunity to commend my colleagues on the Labor and Human Resources Committee for their recent approval of Senator Howard Cannon's nomination to serve on the Board of Directors of the "Barry M. Goldwater Excellence in Education Scholarship Foundation."

The "Barry M. Goldwater Excellence in Education Scholarship Foundation" was created in 1987 as a part of the defense authorization bill to award scholarships to both undergraduate and graduate students interested in pursuing careers in the hard sciences and mathematics. It will also provide honorariums to academicians throughout the United States who encourage our Nation's youth to pursue careers in these fields.

Howard Cannon's record of outstanding service and commitment to education make him an exceptional choice of individuals to serve on this Board.

Howard Walter Cannon was born in St. George, UT on January 16, 1912. He graduated from Dixie College, received a bachelors of education degree at the Arizona State Teacher's College, and a law degree from the University of Arizona in 1937, the same year he was admitted to the bar. He served in the U.S. Air Force during World War II, and was awarded the Legion of Merit, the Distinguished Flying Cross, the Purple Heart, and a long list of other honors. He was shot down over Holland, and remarkably evaded capture for 42 days before reaching allied lines.

At the end of the war, he resumed his law practice in Las Vegas, NV, and went on to become the Las Vegas city attorney for 9 years. In 1958 he was elected to the first of what became 24 years of distinguished service in the U.S. Senate. As a Senator, he served as chairman of the Commerce, Science and Transportation; Armed Services; and Rules and Administration Committees. He is a retired major general in the U.S. Air Force Reserve, and was recognized by the U.S. Senate Commerce Committee with fondness and admiration as "Mr. Aviation."

Again, let me commend Senator Howard Cannon for this special recognition of his service and future contributions to the education of our Nation's youth.

## LEGISLATIVE SESSION

The Senate resumed the consideration of legislative business.

## CONDITIONS FOR THE EXECUTION OF ARREST WARRANTS COMPELLING THE ATTENDANCE OF ABSENT SENATORS

Mr. SIMPSON. Mr. President, my remarks will be brief. We are ready to do business, I believe.

I do want to comment on the past 5 hours of activity. We have had almost 5 hours today on a very serious issue. I made my remarks earlier on the measure, in the leadership time this morning, with regard to the issue of the rules and the arrest of Members. It was an exercise worth doing. I think it was conducted with civility, for the most part, much as we express at times, and with thoughtfulness by all, and I appreciate that on this side of the aisle, particularly Senator DANFORTH indicating that both sides should visit more together, Democrat and Republican alike, formally and informally—I think that is so important—Senator EVANS saying his concern about where the entire Senate and the congressional process is going, not on a partisan note; Senator STEVENS with his historical perspective; and many others sharing genuine concern without rancor.

We all share our great respect for this institution and for each other and no more so than the majority leader, and I have to congratulate him and commend him.

We are in a situation where we had many who wished to discuss that issue. It could have gone on for a long time. He in good grace allowed it to go on for 4 hours as we put together a unanimous-consent agreement and, as I say, it could have been disruptive, it could have gone on, all sorts of activity could have taken place, and he was able to say "take 4 hours to do that and I will take an hour," a very generous act, and he became the focal point for some of that, not directed to him personally.

But it takes a very large person, and I mean that in just that word, in scope to do that and to take the slings and arrows of outrageous fortune which he knew would be coming and to handle those and all of it done really in form of actually a gentleman's agreement as to what would take place. That has been a distinct pleasure and my admiration for the majority leader is ever-increasing after observing him allowing the Senate to "work its will" and that is what that was. The majority leader often uses that phrase and that is what has just been witnessed here.

I thank the Chair.

Mr. BYRD. Mr. President, I thank the assistant Republican leader.

I am glad that the Senators on the other side of the aisle had an opportunity today to speak out on this matter, as they had been wanting to do this for several days. I hope now that this discussion has transpired, we will all stop looking back and look ahead.

This is a subject on which I could speak literally for hours and hours, but I saw no purpose in that. I felt it would be an undue imposition on other Senators' time for me to take much time.

I did what I saw as my duty in offering the motion on Tuesday of last week. I do not say this in any way as a threat of throwing down the gauntlet, but under the same circumstances, I would have to do it again.

I am going to do my duty as I see fit, and I know in many instances that

Senators will not agree with me. I have not attempted to unduly impose on other Senators by speaking of what I see as the responsibilities of all of us as Senators, nor will I impose on Senators by speaking of my responsibilities as I see them as majority leader.

I did my duty. I do not have any regrets for having done my duty.

I regret that circumstances occurred that necessitated my doing that duty. But as far as that is concerned, that is behind us. I have tried to keep my voice down today and not to be too shrill.

There have been some good words said today. I hope that we will all just look ahead and not backward and do our best to fulfill our responsibilities to the Senate and to the people of the Nation and work together. Those of us in the majority have responsibilities sometimes that are difficult to fulfill.

I must say about the Republican leadership that I have received the utmost cooperation from this tall man from the West, and I think he made a fine contribution in helping to make the arrangement for today that I hope, will enable us now to not look over our shoulders but to look ahead and work together. We have much work to do.

I thank him, and I yield the floor.

Mr. SIMPSON. I thank the majority leader for his words.

Mr. BYRD. Mr. President, the Senator from Oklahoma, Mr. BOREN, is here. I am going to move away from this desk. I note that Mr. COHEN is also here.

So I yield the floor and wish them Godspeed in their efforts.

Mr. SIMPSON. Good luck.

## INTELLIGENCE OVERSIGHT ACT

The Senate continued with consideration of S. 1721.

Mr. BOREN. Mr. President, I thank the Senators for the kind words just spoken to me by the majority leader and also by the distinguished acting Republican leader as they were leaving the floor. They wished us well and began to leave the floor. I hope that is not a sign.

I think that we have before us a very important piece of legislation, one which is the product of long work in our committee.

Mr. President, the Select Committee on Intelligence reported S. 1721, the Intelligence Oversight Act of 1988, on January 27 by a vote of 13 to 2, a strong bipartisan majority on both sides of the aisle in the committee. This legislation is an important step in establishing a framework for bipartisan cooperation between the Congress and the executive branch on U.S. policy initiatives abroad that must be covert in order to serve the national interest.

At the outset, I would like to emphasize that S. 1721 is the culmination of the Intelligence Committee's lengthy and comprehensive study of the need for changes in the oversight statutes. We began the current phase of that study over a year ago, on December 1, 1986, when the committee initiated its preliminary investigation of the Iran-Contra matter.

In fact, however, since 1981 the committee has continuously analyzed the issues raised by ambiguities in the applicable statutes, in current law. Indeed, the full legislative record makes clear how extensive has been committee consideration of these issues. They were considered by the Intelligence Committee long before I became a member of that committee.

For just the past year the record includes, first of all, the committee's preliminary Iran-Contra investigation which was completed with a public report on January 27, 1987. During that inquiry, we discussed the interpretation and application of the oversight laws with the Secretaries of State and Defense, the Attorney General, the President's Chief of Staff, one former National Security Adviser, the Deputy Director of Central Intelligence and his predecessor, the CIA General Counsel and his predecessor, and other executive branch officials. While this testimony was not public, it remains part of the committee's legislative record.

A second part of the record begins with the confirmation hearings for a new Director of Central Intelligence, where Bob Gates and then Judge Webster made very strong oversight commitments. After Judge Webster's confirmation, the committee developed a set of recommendations for immediate action by the executive branch under current law that might also serve as the basis for legislation. On July 1, 1987, we sent them to Frank Carlucci, the President's National Security Adviser at that time. This led to consultations with the administration on a new Presidential directive, which contains many of the provisions in the pending bills.

Let me say, Mr. President, those consultations with the White House I think were a model in demonstrating how we can have bipartisan cooperation, cooperation between the Congress and the President in these most sensitive national security areas. I hope they will serve as a model for us to find common areas in which we can work together in the general foreign policy arena.

At the same time, our House colleagues introduced and held hearings on legislative proposals covering the same issues.

Finally, of course, the year-long work of the special Iran-Contra committees is part of our record. The 10 members of the Senate committee included 4 members of the Intelligence Committee—Senator COHEN, Senator NUNN, Senator HATCH, and myself. Through this overlapping arrangement, which included significant involvement by committee staff as well, the Intelligence Committee was able to take full advantage of the deliberations of the Iran-Contra committees.

In order to receive its final recommendations, we postponed hearings on S. 1721 until after the Iran-Contra report was approved. Then we immediately began the final phase of our work with a public hearing on November 13 where the sponsors testified on a number of bills in this area and a closed hearing on November 20 where Judge Webster testified on the practical impact of the bills on the intelligence community.

At a public hearing on December 11, the committee received testimony from the vice chairman of the Iran-Contra Committee, Senator RUDMAN, who cosponsored S. 1721. Also testifying at that hearing were the authors of similar House legislation, Representative LOUIS STOKES, Chairman of the House Intelligence Committee, and Representative MATTHEW F. MCHUGH, Chairman of its Subcommittee on Legislation.

On December 16, the committee held a final public hearing with testimony from Secretary of Defense Frank Carlucci and Under Secretary of State Michael Armacost on behalf of the administration, and from former Secretary of Defense Clark Clifford and former Deputy Director of Central Intelligence John McMahon, who supported the notice requirements in S. 1721.

Before marking up the bill, we also consulted with former senior Government officials and experts in the intelligence field and in intelligence law.

Finally, as part of the markup process that concluded on December 16, we worked with the administration to ensure that all concerns, except for one, had been fully and adequately addressed; that concern being the question of the President's constitutional prerogative. But on all other matters, we were able, I think, to fully address the concerns raised not only by the White House but as to any concerns that might ever be raised by the Intelligence Committee.

Therefore, S. 1721 reflects the results of an exhaustive study of the need for changes in the current oversight statutes. Indeed, few issues have received such detailed consideration by so many people over so great a period of time. Even then, to ensure that all relevant concerns could be taken into account, the committee postponed reporting the bill from December 16 until after a meeting January 27 of this year so that any member

could move to reconsider if new information or issues had emerged.

We wanted to do that, Mr. President, because, after fully considering this matter, after every member of the committee had imput into it, after long circumstances in which members discussed among themselves the basic principles involved in the bill and after listening to the intelligence community, we wanted to give those, particularly in the administration, another opportunity to overlook the product and see if they could find any difficulty with it. So we postponed the actual reporting. We voted to report it, but we held the actual reporting for virtually another month to make sure that we had covered any problem that might arise.

This did not occur. No new information came about and the committee reaffirmed its decision to report the bill favorably, as I said, by a final vote of 13 to 2. In short, the process of developing this bill has been deliberate, open, thorough, and comprehensive.

The final vote in the Intelligence Committee reflects the wide agreement that has been reached on the need to clarify the statutory requirements for covert action operations. The bill applies to covert action by the CIA or any other part of the Government that might be called upon by the President to conduct such operations—including the National Security Council Staff. It specifies the requirements for Presidential authorization of covert actions in formal, written findings. It provides a secure procedure for notice of these findings to the Congress through the Intelligence Committees or key congressional leaders. It eliminates ambiguities in the law that allowed the Justice Department to claim that withholding notice of covert arms transfers to Iran for 10 months did not violate the current statutory requirement for "timely" notice to the Intelligence Committees.

It is important to make clear at the outset the extent to which this bill maintains existing law and conforms to the President's policies, as set forth in a directive issued by the President last year after consultation with the Intelligence Committees.

Since 1974, the Hughes-Ryan amendment has prohibited CIA covert action without a Presidential finding and "timely" notice to certain congressional committees. In 1980, the Congress passed section 501 of the National Security Act which reduced the number of committees notified of CIA covert actions from as many as eight to the two Intelligence Committees.

This was because of the strong feeling in Congress that we should reduce to the number absolutely necessary the number of people that would be notified so that we could preserve the confidentiality of the information that is needed to preserve the security of our country.

S. 1721 concentrates on the requirements for covert action operations, which are called special activities in the bill because that term is used in the executive orders and Presidential directives. The bill is not intended to make any substantive change in the current statutory requirements under section 501 for keeping the Intelligence Committees "fully and currently informed" of intelligence activities other than special activities, except to make the President responsible for ensuring compliance and for reporting illegal activities.

It is important that it be made clear that it is the President's responsibility to make sure members of his administration fully comply with this requirement.

S. 1721 restates the principles in current law that approval by the Intelligence Committee is not—I repeat, is not—a condition precedent to the initiation of any intelligence activity. We do not have to give an affirmative approval under current law before an activity is commenced. We do not have to give an affirmative approval prior to the action being commenced under this bill. The bill also retains the definition of "special activities" contained in current law as set forth in the existing Hughes-Ryan amendment, which applies to the CIA, and in the executive order which applies government-wide.

The bill maintains the protections for sensitive intelligence sources and methods that have been carefully developed over the years. The requirements to keep the Intelligence Committees "fully and currently informed" of intelligence activities, including special activities and significant failures, and to provide information to the committees upon request, are still subject to a clause expressly recognizing the need to ensure protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods and other exceptionally sensitive matters.

Mr. President, the Intelligence Committee, with its current membership, is absolutely committed to the protection of these sensitive intelligence sources and methods and we have held to an absolute minimum any passage of information, even to the committees, which might in any way seek to endanger those important sources and methods.

The bill also reaffirms the obligation of both Houses of Congress under current law to establish procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources provided to the intelligence committees. We have gone beyond the letter of the law in our own procedure. We do not allow Members to take classified documents out of our space. We do not allow them to take notes on classified briefings out of our space. We have sought and won the support of the leaders of both parties in the U.S. Senate for our efforts to cause an immediate removal of any staff member or member or Senator from committees found guilty of having compromised sensitive information important to the national security of this country.

It should be noted that almost all the changes made by S. 1721 in current law parallel the procedures adopted in 1987 by President Reagan in National Security Decision Directive 286. I applaud the President for issuing that directive. As I said, Mr. President, that was a directive entered into through cooperative negotiations between our committee. All the members of our committee participated in drawing those proposals. The President, who virtually accepted all of our proposals, issued that national security directive.

Presidential findings must be in writing or reduced to writing when oral approval is given in an emergency. A finding must be obtained before any department, agency, or other entity of the U.S. Government can conduct a special activity. We must have a finding in advance before any Government agency can begin to conduct such an activity. Findings may not be retroactive and may not violate existing statutes and law. And findings must specify whether a special activity involves a third party who is not under the supervision of a U.S. Government agency.

These are vital procedures to ensure that covert action operations are conducted properly and in the national interest. They reflect agreement between the President and the Intelligence Committee on many of the lessons of the Iran-Contra matter. As long as they have only the status of a Presidential directive, however, that can be set aside or ignored with relative impunity. They can be set aside by a future President, for example, who might not agree with the order President Reagan has issued. We have to legislate for the long term, when a future President may lack the experience with recent problems that has made the need for such procedures clear to President Reagan and the members and staff of his National Security Council.

Mr. President, we feel the need to put these changes in statutory form, even though the President has issued many of them in his own national security directives, because they would not be binding otherwise upon future administrations and future Presidents, and we do not want to ever have our country again, Mr. President, have to go through the kind of experience

with the kind of problems that we have faced over the last few months as a result of the Iran-Contra affair. It has been so damaging to our country to have to air before the rest of the world these kinds of problems within our own Government itself and our own foreign policy and national security apparatus. So we must prevent this damage from being done again to our country in the future, and that is why it is very necessary that we pass this legislation.

It is a protection also for the President. If his orders have to be in writing, if they have to be in advance, people cannot go around within the Government claiming to have Presidential authority. The obvious challenge will be: Let us see his order in writing before we proceed. That is a protection not only for Congress and its involvement, it is a protection for the President of the United States. Ultimately it is a protection for the American people themselves to make sure that these policies are carried out in an appropriate way.

The committee took special care to ensure that S. 1721 did not place undue burdens on the executive branch and the intelligence community. As introduced, the bill appeared to cause some practical problems for the agencies concerned. The committee heard those concerns expressed in both closed and public hearings. Our staff then met with representatives of the executive branch and the intelligence community to draft an amendment in the nature of a substitute that would resolve those concerns. As I have said, at the markup session last December, the committee heard again directly from executive branch representatives before adopting the final language. The committee received assurances at that time that the language, as approved by the committee, resolved every issue other than the requirement to notify Congress within 48 hours of Presidential approval of special activities. That was the only issue that remained. It was a matter of philosophical difference between the two branches of Government.

At the markup session, I offered an amendment which I hoped might bridge the gap on this last remaining issue. The executive branch has a legitimate concern that in exceptional cases where, for example, the lives of Americans being held hostage by terrorists are at stake, a covert operation to aid a rescue attempt should be very tightly held to avoid leaks. If the President limits the number of people in the executive branch to a very few, then Congress should accommodate those tight "need to know" requirements.

That is why I proposed the language in paragraph 503(c)(4) of the bill which gives the President a new option for notifying Congress. Under the current law, the President is supposed to notify the two Intelligence Committees, unless he determines that extraordinary circumstances affecting vital U.S. interests require limiting the information to a smaller number. In that case, he may limit notice to the chairmen and ranking minority members of the Intelligence Committees, the Speaker and minority leader of the House, and the majority and minority leaders of the Senate. The bill retains this provision for notice to the so-called gang of eight in paragraph 503(c)(3).

My amendment in committee added another option for the President to report only to the four elected leaders of the House and Senate. I am talking about the Speaker and minority leader of the House, majority and minority leader in the Senate. This may be done when the President determines that it is essential to meet the most vital security interests of the United States and that risk of disclosure constitutes a grave risk to such vital national interests.

As a safeguard against misuse of this special provision, the President must give the leaders a statement of the reasons explaining why notice to the intelligence community is not being provided, why only the four leaders are being notified. The President must personally reconsider each week thereafter the reasons for continuing to limit such notice and give an explanation of his decision to the leaders. This amendment helps minimize, I believe, any adverse impact of the congressional notice requirement on legislative concerns about the President's ability to exercise his constitutional authorities.

Mr. President, this is something, an issue with which I struggled for a long time. I do not want to see our President have to incur grave risk by notifying too many people. I believe these sort of secrets must be closely held. I understand the special responsibility that the President and Commander in Chief must exercise and that is the reason I provided that in exceptional circumstances only those four people should be notified because they are really the only four that are elected fully by the Members, the entire membership of both the House and the Senate.

I was willing to move the extra mile, so to speak, in saying that even as chairman of the Intelligence Committee there might be exceptional circumstances in which I should not be notified or the vice chairmen of the two committees; that notice could be limited only to the four legislative leaders.

Surely, Mr. President, if we are going to have any hope for bipartisan action, if we are going to have any modicum of truth in being able to work together effectively in our own Government, the President should not hesitate to at least discuss these most sensitive matters with the four leaders, two from each House, elected as leaders of the two parties in both the House and Senate.

I have never known of a situation in which scores of people in the executive branch would not of necessity have to be notified to have an action carried out. If that is the case, surely, surely, Mr. President, the four leaders of the Congress should be included in that group.

I do not know of any situation in history, and there have been some, of course, where Presidents have very carefully contained and held close certain information including the development, for example, of the atomic bomb during World War II. This information at the same time was invariably conveyed to the four leaders, the two leaders in each House.

Another provision in S. 1721 is designed to accommodate the President's constitutional authorities. Subsection 501(a) includes new language that is not in the existing statute and that provides that nothing in the bill shall be construed as a limitation on the power of the President to initiate intelligence activities in a manner consistent with his powers conferred by the Constitution. While the President must tell the Congress, or at least its key leaders, he is free to exercise his authorities as he sees fit.

The vital element is consultation. We cannot build bipartisan support for U.S. foreign policy in the years ahead without a firm commitment to consultation by the President with the Congress.

Mr. President, time and time again I argued for bipartisanship, even to the point that at times there have been those in my own party who thought that I have gone too far. It is something that I believe in with great passion. We must speak to the rest of the world with a single voice. When we get beyond our shores, America must act as one. We must be united, we must forget being Democrats or Republicans, Members of Congress, or members of the executive branch. I believe in that.

I have tried to support this President when I felt he was on the right path. I have tried to minimize public disagreements with him as he entered into negotiations because I think we must be united and present a united front, even when we may have some internal differences of opinion within the family. This simply cannot happen. We cannot have this kind of bipartisanship unless we have adequate consultation between the two branches of Congress.

We have had problems when communication has broken down, and we must make sure we put in place a system that assures that communica-

tion. In most areas that can be done in the open, and the President can test public and legislative sentiment through public statements and the give and take of open debate. Even when the President must act at once to deploy military forces, he does so with the knowledge that their use will be subject to public and congressional scrutiny. In other words, the President is normally accountable to the Congress and the people through the open processes of government.

Convert action operations are an exception. They require secrecy in order to be effective. The statutory notice requirements in the existing oversight statute, and the clarification of those requirements in S. 1721, serve to provide a surrogate for the open processes of government where covert action is required in the national interest.

The joint report of the Iran-Contra committees concluded its chapter on "covert action in a democratic society" with a statement of principles that the Intelligence Committee has followed in developing this legislation:

First, covert operations are a necessary component of our Nation's foreign policy. They can supplement, not replace, diplomacy and normal instruments of foreign policy. As National Security Adviser Robert McFarlane testified, "It is clearly unwise to rely on covert action as the core of our policy." The Government must be able to gain and sustain popular support for its foreign policy through open, public debate.

Second, covert operations are compatible with democratic government if they are conducted in an accountable manner and in accordance with law. Laws mandate reporting and prior notice to Congress. Covert action findings are not a license to violate the statutes of the United States.

Third, as the Church Committee wrote more than a dozen years ago, "covert actions should be consistent with publicly defined United States foreign policy goals." But the policies themselves cannot be secret.

Fourth, all government operations, including covert action operations, must be funded from appropriated moneys or from funds known to the appropriate committees of the Congress and subject to congressional control. This principle is at the heart of our constitutional system of checks and balances.

It is the Congress that must appropriate funds. It is through this methods that Congress exercises its appropriate voice in policymaking for this Nation.

Fifth, the intelligence agencies must deal in a spirit of good faith with the Congress. Both new and ongoing covert action operations must be fully reported, not cloaked by broad findings. Answers that are technically, true, but misleading, are unacceptable. and will not rebuild the kind of trust we need between the committees, Congress, and the intelligence agencies.

Sixth, Congress must have the will to exercise oversight over covert operations. The intelligence committees are the surrogates for the public on covert action operations. They must monitor the intelligence agencies with that responsibility in mind.

We are trustees not only for the rest of the Congress, but for the American people. We take that responsibility seriously in the Intelligence Committee.

Another principle set forth is the following:

Seventh, the Congress also has a responsibility to ensure that sensitive information from the executive branch remains secure when it is shared with the Congress. A need exists for greater consensus between the legislative and executive branches on the sharing and protection of information.

We must come to the Congress with clean hands. If we are going to be asked to be trusted, we must prove ourselves worthy of that trust. Let me say that the leadership and the members of our Intelligence Committee are working every day to demonstrate that we are worthy partners, that we are worthy of that trust in our relationship with the executive branch.

Finally, the gathering, analysis, and reporting of intelligence should be done in such a way that there can be no questions that the conclusions are driven by the actual facts, rather than by what a policy advocate hopes these facts will be.

These principles are being implemented in practice today. The intelligence community under Director Webster's leadership is providing the Intelligence Committee with the information we need to do our job. We are pursuing our oversight responsibilities vigorously. At the same time, the committee had reemphasized its commitment to protecting the security of the sensitive information entrusted to us by implementing stricter security procedures, as I have mentioned.

Vigilant oversight and strict security go hand in hand. We have established a relationship of trust with the intelligence community that serves both the national security of the country and the system of checks and balances under the Constitution.

That is our goal. It gives me great satisfaction and pleasure to be able to say that to my colleagues and my fellow Members of the Senate.

The legislation before us today should help cement that relationship for years to come. I hope that the broad support for this bill in the Intelligence Committee can be matched in the Senate as a whole, so the President will be persuaded to accept this measure. Indeed, it may be worth noting that the President himself has never formally asserted as administration policy the statutory and constitutional interpretations put forth by the Department of Justice. And Director Webster has recently testified before the House Intelligence Committee that the notice requirements in S. 1721 do not, in and of themselves, place undue burdens on the intelligence community. Furthermore, Director Webster has not endorsed the Justice Department's statutory and constitutional interpretations.

In other words, based on our exhaustive effort to consult the executive branch, and the merits of the many important features of this bill, I feel there is every reason to be hopeful that the President will decide this bill strikes an acceptable balance between the constitutional interests of the branches. It provides the framework for collaboration in an area that requires the most careful attention to security and to defining the rules with precision. We do not want a President ever again to be faced with misguided legal advice that tells him he has the legal right to delay notice of a covert action operation indefinitely.

Indeed, as long as there are those who believe the current statute means something other than Congress intends it to mean, which was the testimony before our committee from representatives of the Justice Department, we have no alternative but to legislate. And in so doing, we have the opportunity to clarify the law in other areas where agreement has been reached between the Intelligence Committee and the executive branch.

Finally, I want to pay special tribute to the vice chairman of the Intelligence Committee, the Senator from Maine, who took the initiative to introduce this bill and carry it through the committee.

He is the one who carried it through the committee. He is the one who put it on our agenda. He is the one who turned our attention to this important policy matter. His tireless efforts have made this important legislation possible and have contributed greatly to the pervasive atmosphere of bipartisanship that characterizes all the work of our committee.

I only wish, for the sake of this country, that we could have the same kind of spirit of bipartisan cooperation for the good of our country that prevails in our committee. I want to say publicly that is largely due to the attitudes and to the leadership of Senator COHEN of Maine, with whom I am privileged to work.

As we move toward a vote on this landmark legislation, I urge my colleagues to recognize that the bill before the Senate is very much a product of compromise and accommodation of different views. As many of you know, this Senator was reluctant at first to legislate a binding notice re-

quirement for covert action. But I am convinced that the final bill, as reported by the Intelligence Committee, meets the legitimate concerns of the executive branch and those who respect, as do I, the solemn constitutional responsibilities of the Presidency. In my judgment this bill helps the President meet those responsibilities. I strongly recommend its adoption.

Again, I thank my colleagues for their attention. I ask unanimous consent that an article, which appeared in the Washington Post, by Haynes Johnson entitled "Best Proposal of 1988," which describes this bill, appear in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 1, 1988]

BEST PROPOSED LAW OF 1988

For the new year, here's old business on my personal congressional wish list:

No matter how otherwise frustrating the inevitable 1988 presidential election bickering in Washington proves to be, passage of only one pending bill will ensure that at least something significant will have been achieved in the last session of Congress. That's S. 1721, the so-called Cohen/Boren bill.

Admittedly, Cohen/Boren is not a household term, but it ought to be. It addresses a critical national issue: proliferating U.S. covert intelligence operations, with the Iran-contra affair as the latest terrible example.

"In the last year or so, we have witnessed the recurrence of an all too frequent problem: covert activities that get out of control and embarrass the nation and undermine our credibility and our capability to exercise world leadership," Clark M. Clifford told the Senate Intelligence committee in strongly backing Cohen/Boren a few days before Christmas. "Moreover, this problem is getting worse, the costs are getting higher and the damage is getting greater. For this reason I say that, unless we can control covert activities once and for all, we may wish to abandon them."

No one is more qualified to speak on this subject than Clifford, key counselor of many presidents and former secretary of defense.

In 1946, President Harry S Truman asked Clifford to study the idea of establishing the first peacetime intelligence agency in American history. Out of that assignment came the drafting of the National Security Act of 1947, which, when passed by the Congress, created the Central Intelligence Agency. For 40 years, that act has remained the only statutory authority for covert operations.

Clifford and others who drafted that original act were aware that in giving the nation a regular secret operational capacity for the first time they were dealing with a new, potentially risky enterprise. While Soviet expansionism and the Cold War's advent justified taking bold actions, Clifford worried about the United States creating a Frankenstein—a monster that, in the name of safeguarding U.S. democracy, would jeopardize basic democratic principles. As Clifford put it, "There was concern that our nation not resort to the tactics of our enemies in order to resist them."

With that in mind, the act contained a carefully worded "catchall" clause providing that the CIA shall "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

These were intended to be separate and distinct from normal CIA activities, Clifford recalled in his recent testimony, "and they were intended to be restricted in scope and purpose. The catchall clause was crafted to contain significant limiting language: 'affecting the national security.' "

That original limiting intent has been repeatedly thwarted. Clifford again:

"We have seen an egregious deviation from the original conception of how that act was supposed to function. Covert activities have become numerous and widespread, practically constituting a routine component of our foreign policy. And with these activities have come repeated instances of embarrassing failure—where the goals of the operations themselves were not fulfilled and unforeseen setbacks occurred instead. I believe that on balance covert activities have harmed this country more than they have helped us. Certainly efforts to control these activities, to keep them within their intended scope and purpose, have failed."

Hence, Cohen/Boren in the wake of the Iran-contra debacle and the failure of Congress to exercise its proper constitutional oversight role.

The bill would require the president to sign a written "finding" describing the particulars of a covert activity to Congress within 48 hours of approving it—a change in law opposed by the Reagan administration. If he chose to limit notification to the smaller group of eight congressional leaders, the president would have to explain why and give notice of any significant changes in any covert activity.

These are important changes, but in Clifford's expert opinion they don't go far enough. He'd add provisions automatically cutting off any funds for covert activities if the president failed to follow the prescribed 48-hour notification timetable—and also ensuring that criminal penalties would face any government employe who tried to get around the ban against spending funds for covert activities, as happened in the Iran-contra affair.

Pass it, with the suggested Clifford amendments. It's in the national interest, for 1988 and beyond.

The PRESIDING OFFICER (Mr. ADAMS). The Senator from Maine.

Mr. COHEN. Mr. President, first let me thank my colleague and good friend from Oklahoma for his generous and gracious remarks concerning my participation in the development of this legislation.

From time to time, I refer to the Senator from Oklahoma as the Governor of Oklahoma. I do that not only in jest or in admiration, I must say, because as Governor BOREN, now Senator BOREN, the title means something. It means that he has, in fact, served as a chief executive of an important State. He is sensitive to the needs for executive action, executive discretion.

He is also, I am sure, sensitive to the need to develop a relationship with the Congress to make that relationship function effectively and as smoothly as possible. I must say candidly that Governor BOREN initially was not in favor of a key element of this legislation dealing with the mandatory notice.

I commend him for the role which he played in developing this legislation to the point where he became personally persuaded that it is the best way to achieve the common goals that we have, to have not only a chief executive who can act but also one who has a better chance to act wisely, with more deliberation and a greater source of wisdom perhaps, or at least with the benefit of recommendations coming from a coequal branch of this Government. I thank Senator BOREN for his words and also praise him for his participation in the development of the bill itself.

It would not be here today without his help. It would not be here without his amendments. And I might say—and I will talk about this in a few moments—I did not necessarily agree with the amendments that he offered but in a spirit of compromise agreed that perhaps this was the best way to bring this bill on to the floor. I will talk in a few moments about some of the possible liabilities in making a concession which I did not consider wise at the time and only reluctantly accepted because I believed that it was important we have a bipartisan approach to something that we all should be sharing in any event. That is an attempt to build a bipartisan coalition to support a foreign policy on a sustained and continuous basis if at all possible. So I thank him for his words and his effort.

Mr. President, I will not duplicate what Senator BOREN has stated here very thoroughly and comprehensively today but, rather, address a few comments to perhaps several myths dealing with foreign policy.

One myth is, and you will hear this perhaps later today, that the President is the sole architect of American foreign policy. Mr. President, he may be the sole spokesperson, he may be the sole implementer, but he is not omniscient nor an omnipotent Frank Lloyd Wright of foreign policy. That is a myth. To the extent that there is anyone in this Chamber who claims that he is the sole architect of foreign policy, that is a misreading of the Constitution and a misunderstanding of our role in formulating foreign policy.

Congress, if not a full and coequal partner in the formulation of foreign policy, is far more than the simple limited advisory council that most Presidents would like to maintain.

Now, why do I say that? There are at least four, perhaps five, reasons why I suggest it is a myth to state or believe that the President is the sole architect of foreign policy. We have one very important clause in the Con-

stitution. It is called the appropriations clause: "No money shall be drawn from the Treasury but in consequence of appropriations made by law." The President can formulate no policy and try to implement it without Congress appropriating the dollars in order to make that possible.

So through that appropriations clause we retain the power, a very significant amount of power in the field of foreign policy as we do in domestic policy. It is called the appropriations clause.

Second, by statute, funds appropriated by law can be expended only for purposes authorized by Congress. The President cannot spend a dime that has been authorized for one program and then turn it to another without some support from Congress.

Third, the Constitution gives Congress the exclusive power to determine whether it will be at war or peace with other nations. Once again, there is a notion that somehow because the President is the Commander in Chief he determines whether we go to war or remain at peace. The Constitution vests in Congress, House and Senate working together, the determination as to whether we will be at war or peace. The fact is, particularly in the field of covert actions, the President might, indeed, formulate a covert activity which could bring us to the brink of war with another nation, and yet somehow the argument is made the President must have the exclusive power to determine whether or not this action is visible.

I suggest to my colleagues that nothing could be further from the truth from a reading of the Constitution.

The fourth point I would make is that Congress is charged with the responsibility to raise an army, to maintain a navy. That is not the President's charge in the Constitution. That is our power, not the President's. So the notion that somehow the President, being the Commander in Chief, has the exclusive ability to exercise power in this domain I think is mythical. And we have allowed it perhaps to accumulate through repetition, but it is not well founded or grounded in constitutional law.

A fifth point I make in terms of Congress' role in the shaping are, formulating of foreign policy has to do with treaties. The President can make no treaty commitment with any other government without the advice and consent of the Senate.

Now, hopefully the advice will come before the signing of the treaty but surely must come thereafter. We discovered during President Carter's administration that the President can ignore perhaps the advisory role of Congress but only at his or her peril. And that happened in my judgment during the discussion of the SALT II Treaty which was signed but never ratified by the Senate.

So there are at least five key reasons why we should dismiss this notion that somehow the President is the mythical, exclusive possessor of power in the field of foreign policy.

I would like to turn now to the context of covert activity. Senator BOREN mentioned this during the course of his opening statement. Sometimes it is necessary to accomplish a legitimate foreign policy goal through a secret or covert means. We support that principle for the first time. In statutory language we in the U.S. Congress are saying we recognize the need to occasionally resort to a covert action to achieve a legitimate foreign policy goal, because, generally speaking, we formulate foreign policy in this country—as other policies—in the open.

We have a Foreign Affairs and a Foreign Relations Committee. That is where the debate takes place. That is where the arguments are ventilated. That is where opinions clash and mesh, and hopefully are resolved, in an open, spirited debate on foreign policy. But we now have specific examples where that may not be wise. And so we say we recognize that it may be necessary to achieve a foreign policy goal, a legitimate foreign policy goal, through a secret means. But if we do that, if the administration decides to achieve a foreign policy goal which they otherwise would have to go to the Foreign Relations Committee or the Foreign Affairs Committee to get authority to pursue, we say we will make an exception; you can go, you can authorize a covert activity but first you must do a couple of things, very simple.

First, you must have a finding, you must sign a document saying exactly what the goals are, what we hope to achieve and how we hope to achieve them. That is the first point. It is a written document telling your administration exactly what you intend to achieve.

Second, you must notify Congress. You must notify Congress, or some Members of Congress. That is the price we say you have to pay if you are going to indulge in covert activities. You cannot just do it in the dark and in secret and never notify us. You must have a finding and you must give notification.

We assume, and this has been the practice for the most part, that notice will come prior to the institution of the action itself. The President will sign a finding. He will send the Director of the Central Intelligence Agency up to see us in the Intelligence Committee and they will notify us of the parameters, the goals, the objectives, and the means by which this particular legitimate foreign policy objective shall be achieved. Ordinarily, the notice comes first.

Now, there may be circumstances, as the bill was originally written, there may be circumstances in which the President does not have time to notify Members of Congress of an important action that must be taken immediately. So, an exception was created. The exception said that in that case in which he does not notify us in advance, he shall do so in a timely fashion. That is the way the law reads today, "timely fashion."

It has always been contemplated that the phrase "timely fashion" means within a matter of hours or certainly a matter of days. Those who have testified in open and closed sessions before the Intelligence Committee have indicated that 48 hours has generally been the practice. Some of us may recall, for example, that when Robert Gates came before the Intelligence Committee during his confirmation hearings—he was nominated to be Director of the Central Intelligence Agency—he was asked whether or not he would recommend notifying the Intelligence Committees within a 48-hour period and he said, as I recall, "I can conceive of no situation in which I wouldn't be notifying the committee within that timeframe." Judge William Webster, during his confirmation proceedings, repeated essentially the same thing. John McMahon, the former Deputy Director of the Central Intelligence Agency, supports the 48-hour notice requirement categorically and with no qualification.

So that has been the practice in the past. Now, what happened? The Iran-Contra affair, as we call it, revealed what takes place when the President and his advisers seek to either circumvent or exclude the institutional checks and balances provided by Congress. We know, for example, that there were at least two transfers made of weapons back in August and September of 1985.

There was no finding, no written finding, and there was no notice to Congress. Those were the sales that took place in the late summer, early spring of 1985. There is some dispute as to whether or not the President actually made an oral finding. If you listened to Bud McFarlane's testimony and accept that, then the President gave an oral direction to him to authorize the Israelis to indulge in these sales to the so-called Iranian moderates, but never gave any notice to Congress. If you reject Mr. McFarlane's testimony, then you need only turn to a timetable some 6 months later, January 1986, in which the President on two occasions signed findings authorizing sales of weapons to Iran.

Again, it was a finding here, a written finding, but with an expressed direction not to notify the Intelligence Committee of the Congress of the United States. How do they come to

that direction? The Justice Department took section 501(b) of the National Security Act under which we conduct our oversight responsibilities, and interpreted it to mean that the President could ignore the restraints of an existing law by taking it covert, to use the parlance of the intelligence community, taking it black. He could circumvent an existing law on the books by simply declaring it is now going to be a covert action, taking it covert, and then withholding notice as long as he might deem it to be in the national interest to do so.

Unlimited, unfettered discretion to withhold notice to the Congress of the United States could be hours, it could be days, it could be weeks, or it could be months. It might even be years; no restriction upon his ability to withhold notice to the U.S. Congress. This is totally inconsistent with any notion that we have of accountability, or of meeting the checks and balances test of our Government. It stands the whole notion of checks and balances right on its head. Because without notice, we can give no advice.

Clark Clifford, one of the most distinguished public servants we have had certainly during this century, who was principally involved in the writing of our National Security Act back in 1947, has followed this from its inception, and has seen systematically over the years the kind of abuses that have taken place. He said that really, Congress is looking not for a veto, but simply a voice.

We have a right to have a voice about certain activities that are being undertaken in our name, with the imprimatur of this country. And yet with no notice to the Congress of this country, no notice to the Congress of the United States, we cannot know. Congress provides the only external review of covert activities that in a way protects the President from unwise decisions.

We are not the only people outside of the executive branch who have an opportunity to give the President the benefit of our advice. Those Members who have had the privilege of serving on the Intelligence Committee know that in the past there have been occasions in which the President has submitted a finding for a particular covert action, and a person sitting around that Intelligence Committee room, Republican or Democrat, liberal or conservative, said, "Wait a minute. This does not make good sense. It does not make sense for this country. We think if it were ever carried out, not only would the American people not support it, but it would be either ridiculed or condemned by those who are our allies or our enemies. It does not make good sense. Take a second look at it, Mr. President."

And I would say that almost without exception the President has cooperated in that spirit, has taken our advice, and has canceled certain proposed findings. That is our institutional responsibility. That is what we are here for.

So we are looking for not a veto but a voice. I recall when we filed the Iran-Contra report there was a majority report, the minority report, and some of those in the minority suggested or blamed not the President for undertaking the action, but they blamed Secretary Shultz. They condemned Secretary Shultz because he did not resign. He did not fight hard enough, he and Secretary Weinberger. I disagree with that. But that was the view contained in the minority report by some. He should have resigned if he felt so strongly according to that view.

We do not have to resign. We are coequal to the executive branch, and we have an opportunity to provide the President with advice. We do not have to resign and say, "Mr. President, take our advice or we are walking out and surrendering our membership in the U.S. Senate." The Secretary of State may have to be faced with that kind of alternative. We do not. That was the purpose of setting up a system of checks and balances. So those who argue that the President has the exclusive right to undertake covert actions and withhold for an indeterminate period of time any notice to Congress I think are misreading the Constitution and are in fact not doing a service to the President, but doing a disservice to the President.

There was a notion that was articulated by a number of people during the course of the Iran-Contra investigation. It was captured in the phrase by Colonel North called "lives or lies." I find it somewhat ironic that in the age of nuclear weapons it is Congress under the Constitution that has the power to decide whether we go to war or remain at peace.

We are living in an age of nuclear weapons in which we can vaporize this planet almost instantly, but the power does not reside with the President to decide that. It resides with us. Yet, in dealing with covert actions, some of which might precipitate a conflict or indeed a war, we are told, "We will tell you after the fact, maybe tomorrow, maybe 48 hours, maybe next month, maybe on a weekly basis if someone will tell you why we are not telling you on a weekly basis—can't tell you what the details are, Mr. Senator, or Congressman, we will tell you maybe next week." But then we get to next week, and perhaps wait another month. "We are not sure when we are going to tell you, if at all." There are some people who take that position.

An amendment may be offered to accomplish that goal—simply notifying Congress of a covert activity, but not telling us what it is and saying that sometime in the future we may be willing to tell you.

I find it ironic that we have the war power under the Constitution, and yet the President is now claiming exclusive authority in the field of covert activity and retaining or reserving for himself the right to determine whether or not Congress will be a partner, limited or full or nonexistent.

Another issue strikes me about "lives or lies." They are saying in covert activity that Congress cannot be trusted, that Congress is unworthy of trust in this field. I find it somewhat ironic, to say the least, what is taking place now with the administration lobbying against this bill. They are saying publicly through the Secretary of Defense, and now through Director Webster, that if this 48-hour notice requirement is included, our intelligence community will be undone. And I find that really ironic.

Here is an administration, and I believe them, that said we have complied with the law, we have notified you on each and every occasion prior to Iran-Contra. Senator MOYNIHAN may come to the floor and dispute that, and he will talk about the mining of the harbors of Nicaragua.

But aside from that issue right now, they have said on every occasion in which we have undertaken a covert activity we have complied with the law by notifying you in advance or within a 48-hour period or roughly that period of time. If that is the case, they have jeopardized our intelligence community for almost 8 years now. They have engaged in the undermining of our intelligence community. And I say that is nonsense. That is absolute nonsense.

So for them to argue now that if you pass a law which says you must notify Congress within a specified period of time, you will undo our intelligence community, it seems to me to be a gross exaggeration, one that is politically inspired rather than grounded in the merits.

The reason that the administration did not notify Members of Congress this time on Iran-Contra was quite clear in my judgment.

No. 1, it contradicted this country's public policy—no dealing with terrorists. It contradicted the policy of Operation Staunch.

Here we had Secretary Weinberger and Secretary Shultz going to our allies, saying, "Don't trade any weapons with Iran. We cannot affort to continue this war, the means by which they operate the war with Iraq and win it."

So this covert action violated that policy. It would have put us in a very embarrassing position, and rightly so. It would not only be a very embarrassing position, but also, it would put the backs of the American people on the

cruel rack of extortionists. Everybody in this Chamber knows that an extortionist's price is never paid. It will always be one more hostage or five or more TOW's, or whatever the system might be. That is what we did in selling weapons to the Iranians as part of an overall plan to open up a new dialog with Iran.

Second, I believe that the reason they did not notify the two committees is also very clear. Several of us, or all of us, would have asked: "Do you mean to say, Mr. Director of the Central Intelligence Agency, that the Secretary of State supports this activity, the Secretary of Defense supports this activity, the two key, principal foreign policy and military advisers of the President of the United States, who are now openly supporting Operation Staunch, now favor this?"

Of course, the administration, if they were going to testify candidly—and I believe they would have—both Secretaries would have come before the committee and said, "No, we don't agree with this policy of covert activity." They would have reiterated the very strong arguments they made to the President. I think the adminsitration did not want to hear any more advice on this issue.

So it was not a question of lives being at stake and lies having to be told to protect those lives. It was a question of the adminsitration knowing they were engaged in a policy that was certainly controversial, because it was, at a minimum, somewhat hyprocritical, having a public policy and a private one that were different and over which the administration, itself, was deeply divided.

I believe Secretary Weinberger testified before the Iran-Contra Committee that it was perhaps the first time that he and Secretary Shultz agreed on a particular matter on which they were overruled, that the President disregarded the joint recommendations of the Secretary of Defense and the Secretary of State.

So, that was the reason why Congress was not notified—not because they could not be trusted, but because of the division within the administration.

S. 1721 provides in covert actions that the President give notice prior to undertaking a covert activity; but, in addition, if he fails to do so, he must give notice within 48 hours.

In the field of foreign policy, Congress shares a major role of responsibility, to help shape, formulate, and support those foreign policy objectives.

When the executive branch ignores Congress or seeks to mislead it or circumvent it, then the ship of state is going to be grounded; it is going to sink in political paralysis. That is penalty I think executives will pay, have paid in the past, and will pay in the future when they seek to do this.

The rule of thumb for me is that what the executive cannot persuade, it should not pursue. If it cannot persuade Congress and the American people to support the policy, it should not pursue it. A policy that the American people do not feel, they cannot be forced to accept. Cooperation and conciliation is the only policy worth pursuing, so far as the executive branch's relationship with the Congress of the United States is concerned.

In conclusion, let me try to sum up what this bill does.

This bill does no more than what the President of the United States has agreed to do in his NSDD. It says that all findings should be in writing or reduced to writing immediately; that that finding cannot be retroactive in application; that third parties must be identified to the Intelligence Committees if they are going to be beyond the jurisdiction of the United States. Also, what the President pledged publicly is that he would undertake no covert action unless he could stand before the American people and say, "This is what we tried to accomplish, and we are proud of that particular activity." This bill does not do anything more than that, with one exception.

The only thing we have added is the 48-hour notice. I picked that 48-hour period, as I indicated before, because Mr. Gates, Mr. Webster, and Mr. McMann have all indicated that that is entirely reasonable; that is the practice. That is why we put it in the bill.

The final point I want to make is that Senator BOREN indicated that some proposed amendments were adopted. One dealt with trying to accommodate the executive—not because constitutionally we have to, but in a spirit of comity we said: "Let's try to work out something where your fears about possible leaks of information are in fact reduced and minimized. Let's not simply notify the Intelligence Committee at large."

Under existing law, they can notify the group of eight: the chairmen and vice chairmen of the House and Senate committees, plus the four leaders.

Senator BOREN said: "Let's go further. Let's really minimize their anxieties, real or illusory. Let's minimize their anxieties and confine it to a group of four—just four people now."

If anybody really objects to notifying Senator DOLE, Senator BYRD, Congressman WRIGHT, and Congressman MICHEL, measure that against the people who were notified in the private sector, like Mr. Ghorbanifar. He was notified about the covert activity. He was described by the CIA as being not a pathological liar but at least a persistent liar. They set out a series of polygraph tests—we just debated a polygraph bill—and he passed only two questions, his nationality and his name. He was notified. We could not tell Senator BYRD or Senator DOLE.

How about Adnan Khashoggi? Mr. Khashoggi, international financier, arms dealer, was notified. He knew what was going on. We have Mr. Richard Furmark, a business associate of Mr. Khashoggi. He knew what was going on.

We had a couple of Canadian businessmen. They were engaged—if they existed at all—in blackmail. They tried to blackmail Director Casey into coming up with $10 million they allegedly had fronted for this covert action, or they were going to blow the story wide open. They knew about the covert action. BOB DOLE did not know. BOB BYRD did not know.

I could go on and on from the Israelis who were involved to the pilots of Southern Air Transport, and on a whole list of people who knew about the covert action. But no Member of Congress could be trusted.

It finally ended up in a Lebanese newspaper, where the story was divulged, we believe, through the services of Mr. Ghorbanifar.

I think we should all take great resentment that, somehow, four Members of Congress cannot be trusted to keep a secret, when history is to the contrary and the power as contained in the Constitution is quite to the contrary.

But, nonetheless, Senator BOREN suggested let us put these fears aside. Let us just notify four people under extraordinary circumstances. Do not notify the Intelligence Committee. Do not notify the chairman of the Intelligence Committee or the vice chairman. We cannot trust them. This is so tightly held. Let us just notify four people: the majority leaders and the minority leaders of the House and the Senate. Those are the only Members we can trust.

I might say to my colleagues, and I do not see the majority leader on the floor right now, I am not so sure that is a great idea in limiting the notice to those four. If I had my druthers, if you are going to limit it to four people, I would limit it to the chairman and vice chairman of the Intelligence Committees of both Houses.

Why do I say that? I say it because from my experience I can foresee the day when someone from the Central Intelligence Agency, the Director or someone else in the agency, will go to the President and say, "Mr. President, we have a very, very dangerous mission under way. We don't think you can trust Congress generally. We know you cannot trust the Intelligence Committee. We are not sure about the chairman and the vice chairman, but we are not even sure of how we should share this with the leadership of the House and Senate. Let us just give

them a nice, broad description of the finding."

And the finding, I must tell you, can be phrased in a way in which, if you do not know the history behind the covert action, that particular type of action, and do not know who the players are and the right questions to ask, you can find yourself being notified of a covert action which sounds terrific on the fact of it, one that everyone would enthusiastically support on the surface, but if you do not know which questions to ask, you will not get the right answers certainly. If you do not know what the preceding activities have entailed, you are unlikely to appreciate the full consequences of what is about to be undertaken.

And then a President will be in a position of saying, "Look, we complied with the law. We notified the two leaders. They did not object."

And they are going to be put in the position of saying, "We did not know all the facts."

I think we will rue the day that this occurs but, nonetheless, it is foreseeable and predictable, in my judgment. However, I decided to compromise in an effort to produce a bipartisan approach. But that is the only compromise I think that any of us should make, a final compromise. Otherwise we must be willing to say this Iran-Contra affair was a simple aberration, that we should go back to where we were because under the President's NSDD, under an amendment that may or may not be proposed, what the proposals will do—and the NSDD allows the President to do—is precisely what occurred prior to the Iran-Contra affair. And that is declare it to be an exceptional circumstance, an extraordinary circumstance. Iran-Contra was an extraordinary circumstance and we should not notify any Member of Congress, carry it on for months, maybe years, if we can get away with it, but never confide in any Member of the U.S. Congress.

That is what some of the proposals will do, not their intent. They will phrase it and wrap it in the garb of executive authority, executive privilege and executive power, but the fact remains what they are seeking to do is to return us to the status quo which, in fact, allowed the Iran-Contra affair to be undertaken in the first instance.

So I hope, Mr. President, that our colleagues who are listening or watching will take that into account as proposals are brought to the floor to eliminate the 48-hour notice. I will suggest to my colleagues respectfully that those who will support such a proposal will return us to precisely where we were.

We have learned nothing from history. And I would hope that we had the capacity to learn from our mistakes.

This bill cannot guarantee that future abuses will not occur but they certainly will help to minimize that by giving the President the benefit of our advice in these extremely important covert actions.

The PRESIDING OFFICER (Mr. DASCHLE). The Senator from Nevada.

Mr. HECHT. Thank you, Mr. President.

I have heard our distinguished chairman and vice chairman of the Senate Intelligence Committee, and I would like to say to my colleagues who might be listening I strongly opposed the bill in committee. We had one public hearing in which I openly said I would not support the bill and I voted against it in committee.

Let me tell you why: The argument is not about the division of power between Congress and the President on development and substance of foreign policy. The disagreement is about executions, the operations to carry out foreign policy.

Mr. President, S. 1721 is unnecessary and unwise legislation:

It is unnecessary because the President has already corrected the procedural and managerial deficiencies highlighted by the various Iran-Contra inquiries.

I am not here today to condone the Iran-Contra affair in any way, shape, or form. We have rehashed this up and down the line.

S. 1721 is unwise because it attempts to change the historical and constitutional division of authority between the President and the Congress in the conduct of foreign relations and because it attempts to embed in statute increased congressional committee micromanagement of the executive branch intelligence agencies.

I would remind fellow Senators that we have much to do to improve management of our own constitutional responsibilities, without injecting ourselves further into the daily operational decisions and actions of the executive branch. Congress has come under justified and severe public criticism for inefficiency. I give you the handling of last year's budget process.

S. 1721 attempts to legislate good judgment. What a wonderful world it would be if we could just write enough procedures into our laws to guarantee brilliant, correct decisions on all national security and foreign affairs activities every day or if the rest of the world would just stand quietly by each day while we tried to reach action decisions in committees or Congress and could get our "orders for the day" into the hands of the Federal bureaucracy. We know better, and I suggest that we vote based on that knowledge.

A distinguished and highly respected public servant, Secretary of Defense Frank Carlucci, has explained clearly to us another reason why this legislation is unwise.

In his December 16 public statement to the Intelligence Committee, Secretary Carlucci made clear that this legislation could have a serious negative effect on support from friendly foreign intelligence services. Although some revisions were made in S. 1721 in an effort to overcome this adverse impact, overall the legislation would require a breadth and depth of current congressional knowledge about specific foreign intelligence sources and cooperating agencies which those services will regard as too much of a risk. I think the Congress made it clear during the Iran-Contra Select Committee hearings how far we will go in publicizing the details of secret support from foreign governments and individuals in pursuit of our institutional and partisan political conflicts.

Sponsors of S. 1721 argue that prior notification to Congress of specific covert actions—or at most within 48 hours of a Presidential decision—will avoid foreign policy failures, pain, and embarrassment. I suggest that recent history of direct congressional "operational" involvement in specific foreign policy actions demonstrates that the administration has no exclusive rights to failure, pain, and embarrassment.

The spectacle of congressional leaders, Members, and staff negotiating specific diplomatic steps with foreign governments or groups is an opening to foreign relations and national security chaos.

In a sense, this legislation uses justification for the proper congressional role of "oversight" as a rationale for another step to congressional micromanagement of daily operations within the executive branch agencies. We have already gone too far in that direction.

I opposed this legislation in the Intelligence Committee. I oppose it here.

I urge the Senate to reject this legislation and start on the path of restoring a balanced and efficient relationship between the Congress and the executive branch.

The distinguished chairman of the committee quoted from the Washington Post. I would like to read an editorial from the Wednesday, March 2, 1988, Washington Times, "The Destruction of Covert Action." I am going to take just a couple moments and read this because unfortunately our colleagues are very busy and do not have time to read every item in the daily RECORD.

Senate Intelligence Committee Vice-Chairman William Cohen says that covert action is like "a damn good drug," and he wants to cure what he considers the government's addiction to unacknowledged foreign policy measures with a bill that requires 48-hour notification to Congress of any covert action programs approved by the president. So dangerous is Mr. Cohen's proposal that Defense Secretary Frank Carlucci and the White House say President Reagan will veto it if it remains in its present form.

Mr. Cohen's bill, and a similar House companion, require the president to authorize covert action—"special activity," in the current euphemism—in a written "finding" within 48 hours after deciding to proceed with the action. The finding must be reported to the congressional intelligence committees within 48 hours of being signed and must specify all government agencies involved as well as any "third party" (e.g., friendly foreign governments) "who it is contemplated will be used to fund or otherwise participate in any way in the special activity concerned."

The bill's authors allow some exceptions to the rules. The president may postpone a written finding if "immediate action by the United States is required and time does not permit the preparation of a written finding"—although the president still must draft a written record of the decision immediately and draft a written finding "as soon as possible." The president also may limit access to the finding if he believes extraordinary circumstances demand, but he still must inform the chairmen and ranking minority members of the intelligence committees, the speaker and minority leader of the House and the majority and minority leaders of the Senate—eight people, that is, outside the intelligence community who normally would have no "need to know" at all.

Mr. Cohen's bill offers mind-boggling opportunities for security leaks. It gives congressional staffers, secretaries, clerks and other employees a bird's-eye view of what the intelligence agencies are up to, who is doing it and who is helping them among Americans or foreign governments. The bill also offers a bonanza for ambitious journalists, who would like to have written confirmation for their stories instead of the usual "anonymous sources." And, of course, it really helps foreign spies, for whom presidential findings would make fascinating reading.

Mr. Carlucci, deputy director of the CIA under President Carter, has testified that "our intelligence assets would dry up" if they perceive that "the CIA is obliged to disgorge whatever the committees want." Mr. Carter's national security adviser, Zbigniew Brzezinski, says Mr. Cohen's bill ensures "there won't be any covert action." Mr. Carter's director of the CIA, Adm. Stansfield Turner, has testified that when he recruited an American or foreign agent for covert action, he "would have found it very difficult to look such an individual in the eye and tell him or her that I was going to discuss this life-threatening mission with even half a dozen people in the CIA who did not absolutely have to know." The CIA under Mr. Carter was not exactly a first-rate intelligence organization, but even its major officials find Mr. Cohen's bill positively chilling.

Its red-tape requirements aside, the bill's conception of "timeliness" is simply silly. The 48-hour notification requirement would impose an artificial constraint on covert action that may not accord with the fast-track schedules of terrorists, spies and international emergencies in the real world. "Timeliness," Adm. Turner testified, "is not measured by the clock. Timeliness should be measured by the risk." Mr. Cohen's bill not only seeks more congressional control of presidential authority in foreign policy but also tries to make the real world conform to the neat formulas of statutory law.

This latest foray into the usurpation of presidential foreign policy powers demonstrates just why Congress shouldn't be in the business of micromanaging our foreign policy. The bill would isolate us from the rest of the world's intelligence communities and would make embarrassments—embassy seizures, terrorist acts, compromising of agents—the rule, not the exception. The Senate Intelligence Committee reported out Mr. Cohen's bill by a vote of 13-2, and the full Senate could consider it as early as this week. The lawmakers ought to save Mr. Reagan the trouble of sending it back, but if not, the president should keep his veto pen handy.

In closing, Mr. President, the Intelligence Committee recently received an analysis of S. 1721 prepared for a committee of the American Bar Association by four prominent attorneys with extensive national security experience.

This analysis—which is outstanding in terms of brevity and clarity—indicates that S. 1721 is unwise legislation.

I commend this analysis to all, and ask unanimous consent that it be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

ANALYSIS

The Chairman of the Standing Committee on Law and National Security of the American Bar Association asked four individuals with prior government experience in intelligence matters to study S. 1721 and report to the Standing Committee. Mr. Frederick P. Hitz (formerly Legislative Counsel, CIA). John H. Shenefield (formerly Associate Attorney General of the United States), Daniel B. Silver (formerly General Counsel, CIA and NSA), and Robert N. Turner (formerly Counsel, President's Intelligence Oversight Board) met as a working group and prepared the attached report on S. 1721. It has been sent to the Standing Committee for its consideration.

The views expressed in the draft report are those of the four individuals who contributed it. Pending review, they do not represent the views of the Standing Committee on Law and National Security, nor of the American Bar Association.

---

DRAFT REPORT TO THE STANDING COMMITTEE ON LAW AND NATIONAL SECURITY OF THE AMERICAN BAR ASSOCIATION ON S. 1721

This report to the Standing Committee on Law and National Security considers S. 1721, the "Intelligence Oversight Act of 1987" (the "Bill"), as reported by the Senate Select Committee on Intelligence on January 27, 1988. A companion bill is currently the subject of hearings in the House of Representatives. Our conclusions are that the Bill, while considerably improved in certain respects from the Star Print version of September 25, 1987, should not be enacted in its present form. There are additional changes which ought to be made in the Bill to which we address ourselves below:

(i) As regards intelligence activities other than "special activities" the Bill would change delicately-crafted provisions of the Intelligence Oversight Act of 1980, without apparent justification but with a potential for adversely affecting both the conduct of such intelligence activities and the oversight relationship between the Executive Branch and the Congress as it relates to them.

(ii) As regards all intelligence activities, but special activities in particular, the Bill risks infringing on the constitutional powers of the President. By purporting to create statutory requirements inconsistent with those powers, it would encourage and institutionalize constitutional confrontation and could inhibit necessary presidential action in situations seriously affecting the national security.

OVERSIGHT OF INTELLIGENCE ACTIVITIES OTHER THAN SPECIAL ACTIVITIES

The main impetus for the Bill is to cure perceived deficiencies in the provisions of the Intelligence Oversight Act of 1980 relating to presidential findings as a condition precedent to the initiation of special activities, and to require prior notification of the Congress concerning such findings. It also seeks to remedy other drafting oversights and ambiguities highlighted by the Iran-Contra investigation, such as the elimination of oral and ex post facto findings. Nonetheless, the Bill also substantially revises the provisions of the Intelligence Oversight Act of 1980 relating to the obligations of the President, the Director of Central Intelligence and the heads of departments and agencies to inform the Congress about intelligence *collection* activities and to furnish information regarding them to the Congress. These changes do not seem warranted by evidence from hearings on the Bill or statements by the Bill's proponents that the relationships on these matters between the Executive Branch and the Congress reflected in the 1980 Act have proved insufficient.

The most significant changes that the Bill would bring about are as follows:

1. Section 501(a) would, for the first time, impose a direct obligation on the *President*, as distinguished from the Director of Central Intelligence, to ensure that the intelligence committees are kept "fully and currently informed on the intelligence activities of the United States, including any significant anticipated intelligence activities, as required by this title."

The substantive scope of the obligation does not in itself differ from that which Sec. 501(a) of the 1980 Act places on the Director of Central Intelligence and the heads of other U.S. government departments and agencies. In the 1980 Act, however, these reporting obligations are conditioned by the prefatory language: "[t]o the extent consistent with all applicable authorities and duties, including those conferred upon the executive and legislative branches of the Government and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods."

This language was central to the willingness of the Carter Administration to accept the enactment of the 1980 Act.

The provisions of the Bill weaken the force of the 1980 Act's prefatory clause in two ways: The first is to remove the clause entirely from the provisions in Section 501(a) imposing reporting obligations on the President. In its place there is only a narrow constitutional savings clause which states that nothing in the Bill "shall be construed as a limitation on the power of the President to *initiate* [intelligence] activities in a manner consistent with his powers conferred by the Constitution" (emphasis added). This does not appear to be intended to recognize the existence of any presidential power to *conduct* intelligence activities without informing the Congress about them, but rather suggests acknowledgment only of a narrow possible constitutional authority to defer notification temporarily. Moreover, there is no reference to the pro-

tection of classified information, unless the words "as required by this title" be construed to import into Section 501 the prefatory language of Section 502, which imposes a reporting requirement on the Director of Central Intelligence and the heads of other departments and agencies, a construction which is by no means clear. It would be bizarre to deny to the President the same right to protect information as is granted to his subordinate officers. This ambiguity should be eliminated.

The second change which the Bill would make to the prefatory language of the 1980 Act is to restrict the scope of the information that may be protected. The 1980 Act referred to "classified information and information relating to intelligence sources and methods." In Section 502, the Bill refers only to "classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." This narrows substantially the category of information the protection of which might provide a basis for withholding disclosure from the Congress (not on the grounds that the Congress is an unauthorized recipient but solely on the basis of added risks of disclosure which follow from increasing the number of people holding the information, the "need-to-know" principle).

The elimination of unclassified information regarding intelligence sources and methods from the prefatory language may be relatively insignificant, since information regarding intelligence sources and methods of sufficient sensitivity to warrant withholding from the Congress is likely to be classified or eligible for classification. The narrowing of the protected category, however, to refer only to "*sensitive* intelligence sources and methods or other *exceptionally sensitive* matters" seems unwarranted. Neither the term "sensitive" nor the term "exceptionally sensitive" has any precise meaning. No doubt the drafters intend by these terms to express the thought that justification for withholding information from the Congress should be a rarity rather than a regular matter. No attempt has been made so far in the legislative history to give examples of the kind of rare circumstances that might be considered "sensitive" or "exceptionally sensitive." Such an exercise, in our view, would be both unwise and unnecesary. The basic principle already existing under the 1980 Act is that disclosure to the Congress should be made for the purposes described by the Act, except where compelling reasons exist to withhold such disclosure, grounded under the 1980 Act either in due regard for the protection of information from unauthorized disclosure or in constitutional considerations. Either basis carries with it an inherent and sufficiently high threshhold of seriousness.

While certain of the modifications that the Bill would introduce to the prefatory language of the 1980 Act might be argued to have little or no effect, the elimination of the acknowledgment of constitutional limitations on what disclosures the law can compel is highly significant. In our view, the legislation should make no changes to the portions of the 1980 Act that deal with intelligence *collection* activities. The changes embodied in the Bill do not appear to be justified by any record of significant inadequacy of the 1980 Act as it applies to intelligence collection activities of which we are aware. While it is possible that problems have occurred which have not been reflected in the public record, we consider it unlikely that this could be the case to any significant degree without there having been some public comment by the intelligence committees of dissatisfaction with the agencies' performance under the 1980 Act.

The prefatory provisions of the 1980 Act, which would be significantly narrowed by the Bill, represented a carefully crafted compromise between the positions of the Executive Branch and the Congress, a compromise which recognized several key points. One was that there exists no bright line defining the respective constitutional authorities of the President and the Congress with respect to intelligence activities and thus no absolutist formulation, either affirming or denying a constitutional right of the President to withhold information, could be accepted by either side. A second was that the conduct of intelligence activities—and particularly intelligence collection—required that the intelligence agencies be capable of giving credible assurances of protection to foreign sources of information and assistance, both governments and individuals, to whom the notion of legislative branch oversight is both unknown and alien. On rare occasions such assurances must extend to a promise that the identity or activities of the foreign source will not be revealed to the Congress. Thus it was thought important to leave in the 1980 Act a prefatory clause containing a measure of ambiguity and to leave to the evolution of the oversight relationship, out of the public eye, the development of an appropriate level of disclosure relating to collection activities.

These considerations, in our view, are still valid. To remove any statutory acknowledgment that the provisions of the Bill are not to be interpreted to invade the constitutional powers of the President generally (as opposed to a limited disclaimer which reads only on the *initiation* of activities by the President, does not refer to the constitutional role of the Executive branch in general and is not made applicable to the reporting duties of subordinate officials) is to invite future constitutional confrontations or to encourage inaction on the part of the Executive Branch, and to deprive the intelligence agencies of an important basis on which credible assurances can be offered to their sources.

The intelligence committees of the Congress (and the appropriations committees also, for that matter) are provided a wealth of information on collection programs of the intelligence agencies in the course of the annual intelligence program budget reviews. To our knowledge the committees have never contended that this budgetary information was insufficient to keep them informed about the risks inherent in highly sensitive collection operations. The enterprise of intelligence collection in vital to our nation's security. It would be irresponsible for the Congress to enact a statute for purposes only of political symbolism which could have an adverse effect on the effectiveness of intelligence collection.

THE REQUIREMENT FOR PRIOR NOTICE OF SPECIAL ACTIVITIES

Section 503 of the Bill would impose on the President a requirement of notice to the Congress prior to initiation of a special activity and no later than 48 hours after the making of a finding, subject only to a limited exception under subsection (c)(2), when time is of the essence, permitting notice no later than 48 hours after the finding but after initiation of the special activity. While the constitutional saving clause in Section 501(a) disclaims limitation of the President's power to "initiate such activities in a manner consistent with his powers conferred by the Constitution," that provision, as noted above, does not appear to extend to the President's power to *conduct* a special activity once initiated without notice to the Congress. This seems to reflect the view of the provision's drafters that the President's constitutional powers to withhold notice from the Congress exist at most in situations of exigency and cover only the *commencement* of special activities which are thereafter promptly reported to the Congress.

The question of the respective constitutional powers of the President and the Congress with respect to special activities is too complex to address here. At a minimum, however, it seems clear that serious constitutional issues would be raised not only by legislation that attempted to deny the President the right to initiate such activities without notice to the Congress but by legislation denying the President the right to continue to conduct special activities without such notice. For so long as the President's constitutional prerogatives and duties justified the withholding of notice upon initiation of a special activity, those constitutional powers would seem equally applicable to the on-going conduct of the special activity.

Because the constitutional issues mentioned above have not been definitively resolved by the Supreme Court and continue to engage constitutional scholars in debate, it seems unlikely that the proponents of the Bill can be proceeding on the basis of a certainty that the reporting requirements imposed by the Bill represent a correct statement of the respective constitutional roles of the President and the Congress in this area. Instead, it appears to be the view—one expressed in discussions by members of the staff of the Senate Select Committee on Intelligence—that, while the constitutional issue is indeterminate, the Bill at least would have the virtue of forcing the President to "climb a steep hill" whenever contemplating the initiation or conduct of special activities without prior notice. Thus, by tipping the balance in favor of a statutory requirement of prior notice, the Bill appears intended to put the President's constitutional powers to conduct such activities without prior notice at their lowest ebb and to set the stage for a constitutional crisis should any President ever again proceed in such a manner.

We consider this not a virtue of the Bill but its greatest shortcoming: it would create conditions of permanent constitutional conflict and might precipitate future constitutional crises which inevitably can only be harmful to our system of government. After the body blow to Executive-Congressional relations represented by the Iran-Contra investigation, the task at the present time, in our view, is to rebuild the structure of those relations across the entire spectrum of foreign policy issues, of which special activities are a part. Within that spectrum, special activities by their very nature must occupy a somewhat different position than those foreign policy initiatives which are capable of being debated either in advance of their initiation or in the course of being conducted. Working out the proper relationship between the President and the Congress in this delicate area demands the concerted efforts of both branches to reestablish a climate of trust and comity between them. It requires flexibility on both sides and the nurturing of an institutional structure in

which there is room for the development of pragmatic solutions.

In the particulars cited above, this Bill runs counter to these objectives. Adoption of these provisions would be bad policy, regardless of the constitutional merits of the position it represents. By inviting a constitutional crisis whenever the President steps outside the rigid procedural confines mandated by the Bill, there is a considerable likelihood that the Bill will produce dangerous results.

The argument has been made that the Bill cannot deprive the President of his constitutional powers and therefore does no real harm if in fact it would infringe on them as applied in a specific future situation. This is unrealistic. The constitutional point is one easily forgotten by the press and the public, particularly if the special activity is a failure or unpopular (neither of which necessarily proves that there was not a compelling national interest to undertake it in the first place). If the President acts in the face of a statutory prohibition of unclear constitutionality, he must pay a heavy political price or worse. To any President not supremely confident of his political unvulnerability, this could be a potent force in favor of inaction.

A second danger is that the consequence of any such presidential action, once brought to the attention of the Congress, will be a debilitating confrontation of the kind that surrounded the Iran-Contra affair and that this will occur regardless of the merits of the underlying factual situation. Confrontations of this kind are harmful to the national interest. They benefit neither the Congress nor the President, regardless of who appears to be the "winner." It is a serious mistake to build into the statutory structure of Presidential-Congressional relations a permanent invitation for such crises to occur.

THE DEFINITION OF "SPECIAL ACTIVITY"

The proposed statutory definition of "special activity" in Section 503(e) carries forward the old language of the Hughes-Ryan Amendment as regards the Central Intelligence Agency, but adds a new definition, inspired by Executive Order 12333, applicable to all other agencies and departments of the government.

If special activities are to be subject to findings and notifications when carried on by any agency of the government, it is unclear why a distinction should be made between the CIA and other agencies of government. The implication which arises from the two subsections of Section 503(e) is that there may exist a category of activities conducted by the CIA which does not meet the definition found in subsection 503(e)(2) but which is not "intended solely for obtaining necessary intelligence." If such a category of activities exists—which seems open to question—there is no apparent reason why they should be burdened by a requirement for a presidential finding as a condition precedent when conducted by the CIA, any more than they should be if conducted by any other agency. If legislation in the area of special activities is to be adopted it should cure this defect of the Hughes-Ryan Amendment, which was left essentially intact by the 1980 Act. The authors of the Hughes-Ryan Amendment, in lieu of hazarding a definition of special activities, took the blunderbuss approach of requiring a presidential finding for everything done abroad by the CIA which did not meet the purity of purpose test embraced in "intended solely for obtaining necessary intelligence." It is now almost 15 years since passage of that law. The formulation found in Section 503(e)(2) of the Bill has been in use for a substantial part of that period and is generally understood as describing the kind of activity about which the Congress is concerned. It is a known and workable definition of "special activity" which should be applied to the CIA as well as other U.S. departments and agencies, letting the imperfections of the Hughes-Ryan definition rest in peace. The time is long past to free the President from the unnecessary burden of making findings about low-level activities carried out by the CIA abroad merely because they arise in circumstances that cast doubt on whether intelligence collection is the sole and unalloyed purpose.

The appropriateness of removing subsection 503(e)(1) from the Bill is confirmed by the Report of the Senate Select Committee on Intelligence on the Bill, Report 100-276, which indicates that the definition found in subsection 503(e)(2) represents an Executive Branch interpretation, acquiesced in by the intelligence committees, of what kinds of activities are within the ambit of Hughes-Ryan. Thus, for the last several years the language embodied in subsection 503(e)(1) has been interpreted by CIA and the intelligence committees as meaning what is described in subsection 503(e)(2) and the Senate Report states that such interpretation would continue to be applicable, leaving it entirely unclear what CIA operations would fall under subsection 503(e)(1) and what justification there is for including them.

CONCLUSION

It is to be expected that the trauma caused by the Iran-Contra episode to Executive-Legislative relations would prompt the Congress to seek to redress its grievances in legislation, just as the Church Committee sought to do more than a decade ago in 1976 in reaction to previous intelligence community excesses. However, just as the Church Committee investigations after lengthy hearings and extensive Executive-Legislative deliberations produced the constitutionally ambiguous and delicately balanced Intelligence Oversight Act of 1980, so it is our hope that this Bill will benefit from the observations and suggestions we have made above to achieve a similar balance and freedom from constitutional confrontation. While it is understandable that the intelligence committees wish to make as explicit as possible the rights and duties of both partners to this constitutional duet, in our view it is unwise to push the process too far. For in the end, in the matter of secret intelligence information and activities, it is trust, comity and respect between the Executive and Legislative branches of government which ensures a successful national intelligence effort not a bare listing of legal rights and obligations. If the Executive feels constitutionally hamstrung by congressional requirements, its recourse is to evasion, inaction or to the courts—but not to the production of first-rate intelligence in the national interest. By the same token, if the Congress believes that the Executive is free to ignore meaningful legislative oversight, its reaction is to investigate or oppose, using the power of the purse, which is likewise not in the national interest. Our country is better served if neither side of this constitutional argument is seen to hold sway over the other, and the inevitable power struggles which ensue are sorted out through negotiations between the parties in an atmosphere of mutual respect and concern for the national interest. We believe that adoption of the above comments would help move the Bill in this direction.

Respectfully submitted.

FREDERICK P. HITZ.
JOHN H. SHENEFIELD.
DANIEL B. SILVER.
ROBERT F. TURNER.

---

ADDITIONAL VIEWS OF JOHN H. SHENEFIELD

The events at the center of the Iran-Contra fiasco invite once again in this decade, as did revelations of other such activities not too many years ago, the effort to define with mathematical precision the constitutional responsibilities of the Executive and Legislative Branches in the field of intelligence activities, including special activities. We believe such an effort is unwise now, as it was then. Instead, all of those involved in the policy and practice of intelligence oversight ought to dedicate themselves to rebuilding the trust and confidence that must characterize inter-branch relationships in this most sensitive of areas.

Two ideals must be high on the agenda of that reconstruction of trust. First, officials of the Executive Branch cannot continue to challenge the congressional purpose to participate in the governance of intelligence activities that are at once so essential and so controversial. In every options paper proposing an intelligence activity of significance, there ought to be careful consideration of the potential for damage to the constitutional fabric, whether or not the operation is disclosed to Congress in advance and on the assumption it may turn out to be both a failure and politically unpopular. The price of prolonging the Executive Branch record of arrogance and miscalculation is likely to be a frittering away of the very constitutional power now so vigorously defended. In that direction lies national weakness, not international strength.

Second, the Legislative Branch must organize itself to share the grave responsibility it seeks to exercise. There must be no occasion that justifies allegations of sloppiness or indiscretion. Those in the Congress entrusted with confidence ought to succeed to that position on the basis not of seniority but of fitness, which must itself be confirmed by conventional personnel security procedures.

In short, we are as a nation beyond the point where either branch may rest upon its prerogative alone. The challenge is to build the most efficient and most responsible intelligence community in the world. Both the Executive Branch and the Legislative Branch have an essential part in that effort. But that part must be played at both ends of Pennsylvania Avenue with modesty and a determination not just to foster pet schemes or amass political capital, but to make the system work.

Mr. COHEN. Mr. President, if I might just quickly respond before I yield the floor. I know the Senator from Nevada did not intend to do this, but he was quoting from an editorial comment from the Washington Times which contains a good deal of misinformation, and I think the RECORD should not go unanswered in that respect.

First of all, when it talks about wrapping the administration up in redtape, that is nonsense. This bill does not require any more redtape than

what the President has already pledged to do in the NSC document. So if this imposes anything additional, I would like to know what, other than notification to the Congress.

The President has already agreed that it only makes sound policy to have findings in writing, so there is no misunderstanding, that you cannot and should not ratify retroactive deeds that are undertaken without authority, and that certainly Members of your Cabinet and your National Security Council members ought to know about what the administration is up to.

As far as some of the information or misinformation contained in the Senator from Nevada's statement about the Intelligence Committee's seeking information that will be damaging to the intelligence community, let me just point out it was the President who sent Chairman BOREN and myself a letter. And this is not coming from the Senator from Maine or the Senator from Oklahoma, but the President of the United States. Item No. 4 in that letter states:

> The Intelligence Committee should be appropriately informed of participation of any Government agencies, private parties, or other countries involved in assistance with special activities.

Now, that is what the President said we should be apprised of.

You know something? We did the President a favor. We struck that from the bill. We said, "You don't have to do that, Mr. President."

So what you are quoting from, I say to Senator HECHT, is inaccurate in terms of who is suggesting that third parties and identifications have to be given to the committee. That is not in the bill at all. I am surprised the Washington Times would include that as part of their editorial.

The second point I would make is that, while the Secretary of Defense is making these very heavy pronouncements about apocalyptic results in the event the bill should pass, let me point out that the person who is in charge of covert activities normally, is not the Secretary of Defense. It is the Director of the Central Intelligence Agency. Let me just quote from Director Webster's testimony before the House Intelligence Committee.

> I am also pleased that neither the House nor the Senate bills require that the finding specify the identity of foreign countries assisting the Agency in the conduct of special activities. The proviso on protection of sources and methods, and the ability to protect the identity of foreign countries asisting us will go a long way in assuring friendly services and potential agents that source identifying information will not be widely disseminated and possibly compromised.

So the information reported by Secretary Carlucci is totally inconsistent with what has been stated by the Director of the Central Intelligence Agency. After he looked at the bill, he said that we have removed that potential threat of undermining our covert capability.

I yield the floor.

Mr. MOYNIHAN. Mr. President, I rise in support of the Intelligence Oversight Act of 1988. I do so with considerable pride in this body, in the Senate Select Committee on Intelligence, in its distinguished chairman, Senator DAVID L. BOREN, and its distinguished vice chairman, Senator WILLIAM S. COHEN who have produced this measure.

I rise also with a sense of the precariousness and tentativeness of all institutions, not least those of government. The Intelligence Oversight Act of 1988 is our first major legislative response to the Report of the Congressional Committees Investigating the Iran-Contra Affair. In the history of the American Republic, I do not believe there has ever been so massive a hemorrhaging of trust and integrity. The very processes of American Government were put in harm's way by a conspiracy of faithless or witless men: sometimes both.

In the course of those hearings our learned and incisive colleague, PAUL SARBANES of Maryland, began using the term "junta" to refer to individuals engaged in the assorted conspiracies that are subsumed under what we have come to call Iran-Contra. In an extraordinary series of articles in the New York Review of Books, one of which is entitled "The Rise of the American Junta," Theodore Draper noted that when Senator SARBANES began using that term "Secretary of Defense Caspar Weinberger did not demur at its use."

Draper begins his series with this portentous summation:

> If ever the constitutional democracy of the United States is overthrown, we now have a better idea of how this is likely to be done.[1]

I would note that Mr. Draper is a scholar of great eminence whose special interest has been the rise of totalitarian governments, especially totalitarian Marxist-Leninist governments.

I was present at the outset of this challenge to American constitutional government. I am witness to the first acts of deception that gradually mutated into a policy of deceit.

I saw a program of opposition to subversion abroad transformed into a policy of subversion at home.

I would wish to share this witness with the Senate today, and especially with the managers of this legislation.

Specifically, I became a member of the Senate Select Committee on Intelligence in 1977, the second year of its existence and the first of my service in the Senate. I was clearly a junior member, but well recall my conversation with the then-chairman, the distinguished Senator for Hawaii, Mr. INOUYE. I was, he said, and as I suppose I still am, the only member of the body to have served as an American Ambassador—in India and at the United Nations—and thus had direct experience with the intelligence services. Hence, I might be of some use to my otherwise more experienced colleagues. I was happy to accept Senator INOUYE's invitation.

Four years later I became vice chairman, serving opposite a revered friend, Barry Goldwater of Arizona. Might I note for others who might read these words that only in the most special circumstances do Senate committees have a vice chairman, who presides in absence of the full chairman. This is, among other things, a charge to the strictest bipartisanship.

Now the essence of the legislation concerning oversight by the House and Senate Committees was that Congress be informed in advance of important covert actions. More specifically, the Intelligence Oversight Act of 1980 established the principle that the Intelligence Committees would be kept "fully and currently informed of all intelligence activities" within the responsibility of the CIA, including any "significant anticipated intelligence activity." Moreover, the Intelligence Authorization Act for fiscal year 1981 amended the Foreign Assistance Act of 1961 to make clear that "each operation conducted by or on behalf of the Central Intelligence Agency in a foreign country, other than activities intended soley for obtaining necessary intelligence, shall be a significant anticipated intelligence activity * * *" There was also a provision that if a matter of great urgency and sensitivity was involved, the President could inform the Congress in a timely fashion, and he need only inform the chairman and vice chairman of the Intelligence Committees, the Speaker, House minority leader and majority and minority leaders of the Senate.

This was an exception provided for situations of great urgency or great delicacy, and was understood by all. The committee, for example, was not told in advance of the Iran rescue effort of April 25, 1980. Nor need we have been. But these are special occasions; most intelligence is routine, and soon a routine seemed in place.

On the occasion that our great good friend EDWARD P. BOLAND finished his 8-year term on the House Select Committee on Intelligence, there was a reception. I was asked to speak briefly and said this: It being well established that in order for an activity in the executive branch to flourish, it needs a pair of committees in the Congress to look after it, future historians would wonder that it took almost a generation for something called the Intelligence community to figure this out.

For indeed the intelligence community did flourish. Budgets grew—begin-

ning in the Carter administration—as never before. And trust burgeoned. Or such was my impression.

An informal practice commenced of the CIA briefing only the chairman and vice chairman in situations of special sensitivity, leaving it to them to decide whether to brief the full committee.

I can further attest that during my 4 years as vice chairman, these briefings were frequent—sometimes to the point of seeming endless. Some had a measure of the dramatic: I was summoned from a lecture hall at the Woodrow Wilson Center in the Smithsonian Building to be told of the impending invasion of Grenada. I was happy to have the information, although I recall asking the then-Deputy Director of the Agency in what sense this was to be a covert operation. No matter; the briefings grew more extensive and were, I think, useful to the community. On more than one occasion a particularly exotic notion failed to survive Senator Goldwater's incredulity. Well, that is what oversight is supposed to be.

Then came The Fall.

For reasons not as yet fully understood, and in any event not central to this discussion, the Reagan Administration decided to involve the United States directly in the conflict in Nicaragua. Specifically, on January 7, 1984, magnetic mines were placed in Sandino Harbor under the direction of the Central Intelligence Agency.[2]

By any standards, this was a significant event. It was arguably a belligerent act, and a violation of international law. (The International Court of Justice has so ruled.) In any event, it was something the Intelligence Committees should have been told about in advance, and which by any previous experience we would have expected to have been informed of in advance.

We were not.

Now to an essential detail.

Senator Goldwater and I, and I assume anyone the least interested in the area, knew full well that beginning in early January harbors were being mined in Nicaragua. Much effort was made by the Contras to publicize this fact. After all, the putative object of the mining was to keep shipping away. (I forbear comment on the dimness of using mere percussion mines, which might keep away Mexican oil tankers but would certainly not dissuade Bulgarian freighters crammed with Soviet armaments.) What we did not know was that this mining was carried out by the United States. This was concealed from us.

On April 6, 1984, this fact was revealed in the Wall Street Journal in an article by David Rogers.

UNITED STATES ROLE IN MINING NICARAGUAN HARBORS REPORTEDLY IS LARGER THAN FIRST THOUGHT

WASHINGTON.—The Reagan administration's role in the mining of Nicaraguan harbors is larger than previously disclosed, according to sources who say that units operating from a ship controlled by the Central Intelligence Agency in the Pacific participated in the operation.

Though anti-Sandinista insurgents have claimed credit for the mining, a source familiar with CIA briefings on the operation said that the units operating from the ship are self-contained, and are composed of Salvadorans and other Latin Americans from outside Nicaragua * * *

The Senate Intelligence Committee hasn't had a full briefing on the operation, but CIA Director William Casey recently appeared before the House Intelligence Committee, where details of the mining were apparently first disclosed to Members of Congress.[3]

This news came as a shock to Senator Goldwater and to me. We had felt a system was in place; we realized it was not. On April 9, Senator Goldwater sent a public letter to Mr. Casey.

UNITED STATES SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
*Washington, DC, April 9, 1984.*

Hon. WILLIAM J. CASEY,
*Director of Central Intelligence, Washington, DC.*

DEAR BILL: All this past weekend, I've been trying to figure out how I can most easily tell you my feelings about the discovery of the President having approved mining some of the harbors of Central America.

It gets down to one, little, simple phrase: I am —— off!

I understand you had briefed the House on this matter. I've heard that. Now, during the important debate we had all last week and the week before, on whether we would increase funds for the Nicaragua program, we were doing all right, until a Member of the Committee charged that the President had approved the mining. I strongly denied that because I had never heard of it. I found out the next day that the CIA had, with the written approval of the President, engaged in such mining, and the approval came in February!

Bill, this is no way to run a railroad and I find myself in a hell of a quandary. I am forced to apologize to the Members of the Intelligence Committee because I did not know the facts on this. At the same time, my counterpart in the House did know.

The President has asked us to back his foreign policy. Bill, how can we back his foreign policy when we don't know what the hell he is doing? Lebanon, yes, we all knew that he sent troops over there. But mine the harbors in Nicaragua? This is an act violating international law. It is an act of war. For the life of me, I don't see how we are going to explain it.

My simple guess is that the House is going to defeat this supplemental and we will not be in any position to put up much of an argument after we were not given the information we were entitled to receive; particularly, if my memory serves me correctly, when you briefed us on Central American just a couple of weeks ago. And the order was signed before that.

I don't like this. I don't like it one bit from the President or from you. I don't think we need a lot of lengthy explanations. The deed has been done and, in the future, if anything like this happens, I'm going to raise one hell of a lot of fuss about it in public.

Sincerely,

BARRY GOLDWATER,
*Chairman.*

Three days after that Mr. Bud McFarlane, then National Security Advisor, gave an address at the Naval Academy in which he stated that "Every important detail of [the mining operation] was shared in full by the proper congressional oversight committees."

The same day, Mr. Casey issued the following Employees Bulletin to CIA employees:

APRIL 12, 1984.

EMPLOYEE BULLETIN

RECENT PRESS ARTICLES

1. Knowing that all Agency employees are interested in a number of recent press articles saying that the Agency had not briefed Congress on covert action programs in Central America, it is important for all of us to know the facts.

2. What you may have read in the press on this subject is not true. In accordance with prevailing practice, the Agency did indeed brief our two Oversight Committees on the matters discussed in the press during this week. In particular:

a. We briefed the members of the House Permanent Select Committee on Intelligence (HPSCI) on 31 January and 27 March 1984.

b. We briefed the members of the Senate Select Committee on Intelligence (SSCI) on 8 March and again on 13 March 1984;

c. In addition, we responded to specific detailed questions on these activities to individual Senators on 28 and 30 March, and briefed the SSCI staff members in detail on 2 April 1984;

d. Also, we have over the past several months replied in writing to written questions on this activity from the SSCI and the HPSCI.

3. In sum, we have fully met all statutory requirements for notifying our Intelligence Oversight Committees of the covert action program in Nicaragua. This Agency has not only complied with the letter of the law in our briefings, but with the spirit of the law as well.[4]

WILLIAM J. CASEY,
*Director of Central Intelligence.*

A report of Mr. McFarlane's Naval Academy address appeared in the Washington Times on April 13: "McFarlane Says Hill Knew About Mining."

On April 15, I announced that I would resign as Vice Chairman:

I have announced today that I will resign as Vice Chairman of the Senate Select Committee on Intelligence.

This appears to me the most emphatic way I can express my view that the Senate Committee was not properly briefed on the mining of Nicaraguan harbors with American mines from an American ship under American command.

An Employee Bulletin of the Central Intelligence Agency issued April 12 states that the House Committee was first briefed on 31 January, but the Senate Committee not until 8 March. Even then, as Senator Goldwater has stated, nothing occurred which

could be called a briefing. The reference is to a single sentence in a two-hour Committee meeting, and a singularly obscure sentence at that.

This sentence was substantially repeated in a meeting on March 13.

In no event was the briefing "full," "current," or "prior" as required by the Intelligence Oversight Act of 1980—a measure I helped write.

If this action was important enough for the President to have approved it in February, it was important enough for the Committee to have been informed in February.

In the public hearing on the confirmation of John J. McMahon as Deputy Director of Central Intelligence I remarked that with respect to intelligence matters the oversight function necessarily involves a trust relationship between the committee and the community because we cannot knowwhat we are not told, and therefore must trust the leaders of the community to inform us.

I had thought this relationship of trust was securely in place. Certainly the career service gave every such indication. Even so, something went wrong, and the seriousness of this must be expressed.

I will submit my resignation when Senator Goldwater returns from the Far East.[5]

Now here is the point.

All references by Mr. Casey and his associates were made to committee hearings or individual briefings which had taken place after the event. Two to three months after the event, to be exact.

This was an immensely successful deception. Individuals came forward to attest that they had, in fact, been briefed, or that there was indeed such and such a sentence on such and such a page of testimony.

This completely obscured the essential fact that the committee had not been briefed in advance.

Senator Goldwater knew this. I knew this. Clearly few others knew it save those who were trying to throw sand in our eyes.

May I say to the Senate that I realized at the time that my action would not be understood. There was just too much to explain: briefing before as against briefing after; the direct involvement of the United States; the clear effort at deception by Mr. Casey. Clear to me, that is, but to few others. The best journalists were skeptical; the harshest editorialists were, well, derisive.

I wish to record my judgment that Mr. McFarlane was misled along with many others. After my proposed resignation, he volunteered to me, in a telephone conservation, that either what he had been told was "disingenous or outright wrong." I believe Mr. Casey lied to him, as to so many others. In the Iran-Contra hearings, this exchange took place with Senator SARBANES.

Mr. SARBANES. Did you know about the mining of the Nicaraguan Harbor?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. Did you think that should have been consulted with the Intelligence Committee?

Mr. MCFARLANE. Yes, sir.

Mr. SARBANES. It wasn't done.

Mr. MCFARLANE. No, sir.

On the other hand, Mr. Casey understood. On April 25, he sent a handwritten note of apology to Senator Goldwater, and the next day apologized in person to the committee. I thereupon agreed to stay on as vice chairman.[6]

Senator Goldwater and I wondered whether the whole matter might simply have been a misunderstanding. The statute spoke of significant anticipated activities. Very well, what was significant? Perhaps Mr. Casey and the intelligence community hadn't thought the mining was such, even though we did. We decided we would try to interpret the statute, much as judges often do. What was "significant"? I believe it was I who came up with a working definition. To wit, anything the President signed. Only so many pieces of paper get to the President's desk. There are things the military, the Agency, whatever, would not do without his direct order—things they would not do without his certain knowledge. Very well. If you see the President's signature, report to the committee.

We drew up an accord, as we called it. An accord between the committee and the Agency, but with the approval of the President. This was obtained by Mr. McFarlane. Again evidence, in my view, of his innocence in this sordid conspiracy. It was signed by Mr. Casey, Senator Goldwater, and by me, and dated June 6, 1984:[7]

PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE (SSCI) ON COVERT ACTION

The DCI and the SSCI agree that a planned intelligence activity may constitute a "significant anticipated intelligence activity" under section 501 of the National Security Act of 1947 (the "Intelligence Oversight Act of 1980") even if the planned activity is part of an ongoing covert action operation within the scope of an existing Presidential Finding pursuant to the Hughes-Ryan Amendment (22 U.S.C. 2422). The DCI and the SSCI further agree that they may better discharge their respective responsibilities under the Oversight Act by reaching a clearer understanding concerning reporting of covert action activity. To this end the DCI and the SSCI make the following representations and undertakings, subject to the possible exceptional circumstances contemplated in the Intelligence Oversight Act:

1. In addition to provide the SSCI with the text of new Presidential Findings concerning covert action, the DCI will provide the SSCI with the contents of the accompanying scope paper following approval of the Finding. The contents of the scope paper will be provided in writing unless the SSCI and the DCI agree that an oral presentation would be preferable. Any subsequent modification to the scope paper will be provided to the SSCI.

2. The DCI also will inform the SSCI of any other planned covert action activities for which higher authority or Presidential approval has been provided, including, but not limited to, approvals of any activity which would substantially change the scope of an ongoing covert action operation.

3. Notification of the above decisions will be provided to the SSCI as soon as practicable and prior to the implementation of the actual activity.

4. The DCI and the SSCI recognize that an activity planned to be carried out in connection with an ongoing covert action operation may be of such a nature that the Committee will desire notification of the activity prior to implementation, even if the activity does not require separate higher authority or Presidential approval. The SSCI will, in connection with each ongoing covert action operation, communicate to the DCI the kinds of activities (in addition to those described in Paragraphs 1 and 2) that it would consider to fall in this category. The DCI will independently take steps to ensure that the SSCI is also advised of activities that the DCI reasonably believes fall in this category.

5. When briefing the SSCI on a new Presidential Finding or on any activity described in paragraphs 2 or 4, the presentation should include a discussion of all important elements of the activity, including operational and political risks, possible repercussions under treaty obligations or agreements, and any special issues raised under U.S. law.

6. To keep the SSCI fully and currently informed on the progress and status of each covert action operation, the DCI will provide to the SSCI: (A) a comprehensive annual briefing on all covert action operations: and (B) regular information on implementation of each ongoing operation, with emphasis on aspects in which the SSCI has indicated particular interest.

7. The DCI and the SSCI agree that the above procedures reflect the fact that covert action activities are of particular sensitivity, and it is imperative that every effort be made to prevent their unauthorized disclosure. The SSCI will protect the information provided pursuant to these notification procedures in accordance with the procedures set forth in S. Res. 400, and with special regard for the extreme sensitivity of these activities. It is further recognized that public reference to covert action activities raises serious problems for the United States abroad, and, therefore, such references by either the Executive or Legislative Branches are inappropriate. It is also recognized that the compromise of classified information concerning covert activities does not automatically declassify such information. The appearance of references to such activities in the public media does not constitute authorization to discuss such activities. The DCI and the SSCI recognize that the long established policy of the U.S. Government is not to comment publicly on classified intelligence activities.

8. The DCI will establish mechanisms to assure that the SSCI is informed of planned activities as provided by paragraphs 1 through 4, and that the Committee is fully and currently informed as provided by paragraph 6. The DCI will describe these mechanisms to the SSCI.

9. The SSCI, in consultation with the DCI when appropriate, will review and, if necessary, refine the mechanisms which enable it to carry out its responsibilities under the Intelligence Oversight Act.

10. The DCI and the SSCI will jointly review these procedures no later than one year after they become operative, in order to assess their effectiveness and their impact on the ability of the DCI and the

Committee to fulfill their respective responsibilities.

BARRY GOLDWATER,
*Chairman, SSCI.*
DANIEL PATRICK MOYNIHAN,
*Vice Chairman, SSCI.*
WILLIAM J. CASEY.

JUNE 6, 1984.

Note the provision that we would review the matter in a year's time. This review did not occur until June 1986. By that time Senator Goldwater and I had rotated off the committee, and were succeeded by our friends, Senators DURENBERGER and LEAHY. I perhaps shouldn't say, but I gather Mr. Casey simply delayed matters as he was inclined to do. (On June 6, 1984, we had to send the committee counsel out to CIA headquarters with instructions not to return until he had Mr. Casey's signature. He had to wait the whole day.) Nonetheless, 2 years later the review did finally take place, and the second written understanding was signed. (Hence the term "Casey Accords").[8]

ADDENDUM TO PROCEDURES GOVERNING REPORTING TO THE SENATE SELECT COMMITTEE ON INTELLIGENCE ON COVERT ACTION

1. In accordance with Paragraph 10 of the Procedures Governing Reporting to the SSCI on Covert Action, executed on June 6, 1984, the SSCI and the DCI have jointly reviewed the Procedures in order to assess their effectiveness and their impact on the ability of the Committee and the DCI to fulfill their respective responsibilities under section 501 of the National Security Act of 1947.

2. The Committee and the DCI agree that the Procedures have worked well and that they have aided the Committee and the DCI in the fulfillment of their respective responsibilities. Procedures set forth below:

In accordance with the covert action approval and coordination mechanisms set forth in NSDD 159, the "advisory" format will be used to convey to the SSCI the substance of Presidential Findings, scope papers, and memoranda of notification.

Advisories will specifically take note of any instance in which substantial nonroutine support for a covert action operation is to be provided by an agency or element of the U.S. Government other than the agency tasked with carrying out the operation, or by a foreign government or element thereof. It is further agreed that advisories will describe the nature and scope of such support.

In any case in which the limited prior notice provisions of section 501(a)(1)(B) of the National Security Act are invoked, the advisory or oral notification will affirm that the President has determined that it is essential to limit prior notice. It is further agreed that in any section 501(a)(1)(B) situation, substantive notification will be provided to the Chairman and Vice Chairman of the SSCI at the earliest practicable moment, and that the Chairman and Vice Chairman will assist to the best of their abilities in facilitating secure notification of the Majority and Minority leaders of the Senate if they have not already been notified. It is understood that responsibility for accomplishment of the required notification rests with the Executive Branch.

It is understood that paragraph 6 of the Procedures, which requires that the SSCI shall be kept fully and currently informed of each covert action operation, shall include significant developments in or related to covert action operations.

The DCI will make every reasonable effort to inform the Committee of Presidential Findings and significant covert action activities and developments as soon as practicable.

3. In accordance with paragraph 4 of the Procedures, the DCI recognizes that significant implementing activities in military or paramilitary covert action operations are matters of special interest and concern to the Committee. It is agreed, therefore, that notification of the Committee prior to implementation will be accomplished in the following situations, even if there is no requirement for separate higher authority or Presidential approval or notification:

Significant military equipment actually is to be supplied for the first time in an ongoing operation, or there is a significant change in the quantity or quality of equipment provided;

Equipment of identifiable U.S. Government origin is initially made available in addition to or in lieu of nonattributable equipment;

There is any significant change involving the participation of U.S. military or civilian staff, or contractor or agent personnel, in military or paramilitary activities.

4. The DCI understands that when a covert action operation includes the provision of material assistance or training to a foreign government, element, or entity that simultaneously is receiving the same kind of U.S. material assistance or training overtly, the DCI will explain the rationale for the covert component.

5. The DCI understands that the Committee wishes to be informed if the President ever decides to waive, change, or rescind any Executive Order provision applicable to the conduct of covert action operations.

6. The Committee and the DCI recognize that the understandings and undertakings set forth in this document are subject to the possible exceptional circumstances contemplated in section 501 of the National Security Act.

7. The Procedures Governing Reporting to the SSCI on covert action, as modified by this agreement, will remain in force until modified by mutual agreement.

DAVE DURENBERGER,
*SSCI Chairman.*
PAT LEAHY,
*SSCI Vice Chairman.*
WILLIAM J. CASEY.

JUNE 5, 1986.

It is painful, of course, to record what all Senators know. Five months earlier, on January 17, 1986, the President had signed what we call a finding which authorized the shipment of arms to Iran and explicitly provided that the Intelligence Committees would not be told.

Thus had the practice of deception mutated into a policy of deceit.

I will not detain the Senate longer, but would like to ask my distinguished colleagues whether this account of events comports with their understanding?

I see the distinguished chairman of the committee has risen.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank my distinguished colleague from New York for the history which he has presented to the record and the information which he has shared with our colleagues tonight. The Senator from New York performed invaluable service during his time on the Intelligence Committee and his service as the distinguished vice chairman of that committee.

So often as we deliberate on legislative matters of great importance, we have missing the historical record, we do not have the perspective with which we should be viewing the current issue. I think the Senator from New York has given us that record and that perspective in the remarks he has just made. He has, indeed, given fully accurate rendition of the events that occurred during that period of time. He has given us an indication of the kind of agreement that was worked out partly through his efforts with the executive branch at that time. It indicates to us how long this issue has been with us, how long there have been ambiguities in the statute that the committees and the executive branch have tried to clarify through joint agreements. But, unfortunately, this history also indicates to us the reason why we must now consider statutory enactments. We have had letters of agreement, we have had memoranda of understanding. Actually, we have reduced to writing and jointly executed agreements in the past. But those agreements, unfortunately, do not have the force of law. They can be changed. They do not have the force of statutory enactment. And the history in many ways is a sad history, but it is a history that we cannot disregard. It is a clear indication that those things that are agreed upon in letter can be changed, can be ignored.

I commend the Senator from New York. I thank him again personally for bringing this history to us. The Senator from New York has performed a very great service to this body in recounting this history for us. I think he has, in the information he has given to us, given a very clear presentation to the Sentate that argues for the necessity of the statutory enactment that we are now considering.

So again I salute him. I pay tribute to him for the contribution he has made to the deliberations on this issue. He is, indeed, one of the pioneers in the Senate in terms of giving thought and in dedicating his own very substantial intellectual energies to this particular question.

I thank him again and indicate again that the record as he has given it is accurate. I hope that my colleagues will consider it because it is certainly instructive as to why we must now act if we are to set up a system that will

serve us well and with certainty in the future.

Mr. MOYNIHAN. I thank the distinguished chairman for his generous remarks which are more appreciated by the Senator from New York than perhaps he realizes. Those were not easy times in the spring of 1984.

Might I also say to the distinguished Senator from Oklahoma that the bill he and the distinguished Senator from Maine have introduced addresses this problem of congressional notification most effectively? It is of particular importance that under this legislation, "special activities"—that is, covert actions—would have to be authorized by a written finding; and this finding would have to be:

Reported to the Intelligence Committees prior to the initiation of the activities authorized, and in no event more than forty-eight hours after such finding is signed or the determination is otherwise made by the President.

The bill also provides that "On rare occasions when time is of the essence," special activities may begin prior to such reporting, but notice shall be given no later than 48 hours after the signing of the finding which authorizes the activities. And under extraordinary circumstances, the President may limit this reporting to the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate.

However, while the Intelligence Oversight Act of 1988 provides a much-needed statutory response to the Iran-Contra affair, we must not assume that enactment of this legislation will create an absolute bar to future abuses. Executive officials both ignored and sought to evade the law in Iran-Contra; they may do so again. Law, no more than less formal understandings, cannot be proof against deliberate deceit. That is why Bryce Harlow used to say that trust is the coin of the realm. Debase that coin and all is lost.

Mr. Draper concluded the last of his New York Review articles with these two paragraphs:

Institutional changes have been tried without long-term success. A conniving CIA director with the backing of a President who thinks in slogans can change or get around the rules whatever they are. The congressional oversight committees usually know as much as they are told and often do not wish to be responsible for knowing too much. When the Nicaraguan harbors were mined by the CIA in 1984, the Senate Intelligence Committee learned about it after the damage was done. To his credit, Senator Daniel Patrick Moynihan resigned from the committee in protest—an act now so rare that it was regarded as a personal eccentricity. Casey apologized and Moynihan relented. Casey did not change his ways; he merely became stealthier and soon inveigled Oliver North into covering for the CIA.

Yet Moynihan's short-lived protest suggests what is needed to hold covert operations in check. It is too much to expect an administration to police itself. In our system the only safeguard is the old one of checks and balances. It is as old as it is because no one has thought of anything better in a democratic, constitutional order. It is easy for Senators and Representatives to strike a high and mighty moral pose in congressional hearings on executive malfeasance. During the entire Iran-Contra hearings, almost no attention was paid to the inattention and ineffectiveness of Congress while all the skullduggery was going on. If checks and balances cease to work in our system, the rogue elephant will almost surely rampage again.[8]

I include this as a caution to those who will succeed to these responsibilities, and with what I hope is an ample understanding that in our brief authority, for all that we tried, we failed.

Mr. President, I ask unanimous consent that the footnotes to my statement be printed in the RECORD.

There being no objection, the footnotes were ordered to be printed in the RECORD, as follows:

FOOTNOTES

[1] Theodore Draper, "The Rise of the American Junta," New York Review of Books, Oct. 8, 1987, p. 47.

[2] "Report of the Congressional Committees Investigating the Iran-Contra Affair," p. 36. Mines were later laid at El Bluff on Feb. 24 and 25, and at Corinto on Feb. 29.

[3] David Rogers, "U.S. Role in Mining Nicaraguan Harbors Reportedly Is Larger Than First Thought," Wall Street Journal, Apr. 6, 1984, p. 6.

[4] CIA Employee Bulletin No. 1113, Apr. 12. 1984, signed by DCI William J. Casey.

[5] Public statement by Senator DANIEL PATRICK MOYNIHAN, Apri. 15, 1985.

[6] Please see Philip Taubman, "Moynihan to Keep Intelligence Post," New York Times, Apr. 27, 1984, p. 1.

[7] "Procedures Governing Reporting to the Senate Select Committee on Intelligence (SSCI) on Covert Action," June 6, 1984.

[8] Theodore Draper, "An Autopsy," New York Review of Books, Dec. 17, 1987, p. 75.

AMENDMENT NO. 1623

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Idaho [Mr. McCLURE] proposes an amendment numbered 1623.

Mr. McCLURE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(On page 16, after line 19 in Section 503 add the following new subsection (c)(5) and redesignate the following subsections accordingly.

(5) Notwithstanding the provisions of subsections (2), (3) and (4) above, when the President determines that the risk of disclosure would pose an additional, direct and immediate threat to the life of a U.S. official or agent of the U.S. Government, or a foreign national who is assisting the U.S. Government in a special activity, or a hostage or other person for whose benefit the activity is being conducted; or that compliance with the provisions of subsections (2), (3) or (4) would jeopardize the cooperation of other intelligence services when this cooperation is critical for U.S. interests or for the success of the operation, the President may for a limited time withhold transmission of findings or determinations pursuant to subsections (1) or (2) of this section. In such cases, the President shall notify the chairmen and ranking members of the intelligence committees, the Senate Majority and Minority Leaders, and the Speaker and Minority Leader of the House of Representatives, that a special activity which meets the above criteria is being conducted. However, at this time, the President shall not be required to report the finding or determination authorizing the operation or otherwise disclose the details of the activity in question. The President shall personally reconsider each week thereafter the reasons for continuing to limit such notice, and shall provide a statement on a weekly basis to the Members of Congress identified herein above confirming his decision. The President shall immediately provide full notice when he determines that the circumstances described above no longer exist. At this time the President shall provide a detailed accounting of the reasons explaining why full notice to the intelligence committees, the Chairmen and Ranking Members of these committees, the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House, was withheld.

Mr. McCLURE. Mr. President, the Iran-Contra affair demonstrated the need to review and improve the procedures for executive branch consultation with Congress on intelligence activities. This had been done, and the President has adopted the recommendations of the Tower Commission and critical recommendations of the majority report of the Iran-Contra Committee. These include:

A requirement that findings be in writing and may not be retroactive;

Any special activity by any Government agency or entity would require a finding;

A requirement that the intelligence committees be informed when a special activity involves a third party that is not under the supervision of a U.S. Government agency.

These provisions are included in S. 1721.

The administration has also created procedures so that, in all but extraordinary circumstances, the congressional intelligence committees will be informed of findings within 48 hours. The administration has thereby demonstrated its willingness to maximize cooperation and consultation with Congress.

However, S. 1721 goes too far by creating a statutory requirement that the Congress be informed of all special activities within 48 hours. The exemptions that would allow notification to be limited to the so-called Gang of 8 or so-called Gang of 4 do not address the fundamental problems, which are that this provision:

Could endanger American lives and the lives of others who have taken the risk of assisting the United States;

Could jeopardize the cooperation of other intelligence services; and

Unconstitutionally infringe on the President's constitutional authority to ensure effective management of our intelligence resources or undermines his flexibility in carrying out his constitutional duties in the conduct of foreign affairs.

Mr. WALLOP. Will the Senator yield for just a second for an observation?

Mr. McCLURE. I am happy to yield, if I may do so without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. I compliment the Senator when he suggested this bill will cost some lives. One of the lives that potentially may be lost is that which we would endeavor to save, not only the people that cooperate with us but those who might be of our own Nation's hostages or somebody else's. I just recall so clearly the little effort done for us by the Canadian Ambassador with the several American hostages that escaped from Teheran, and I am telling you that this bill will cost lives in a circumstance like that, perhaps even the life of the man that cooperates with us but specifically the lives we set out to save.

So I compliment the Senator for bringing that point out.

Mr. McCLURE. Mr. President, I thank the Senator from Wyoming for that statement because, indeed, I believe that to be the truth. I think that is one of the reasons why it is imperative for us to find a way in which the President can exercise some judgment to avoid that consequence when he finds it necessary to do so. I thank the Senator for the comment.

Former CIA directors from Republican and Democratic administrations have testified against the 48-hour notification requirement on the grounds that it would endanger the lives of those involved in carrying out special activities.

I quote from the statement of Adm. Stansfield Turner before the House Intelligence Committee, April 1, 1987:

> . . . I would suggest there is one case in which notification to the Congress in 48 hours poses a genuine concern to the intelligence professionals. That is when a chief of intelligence finds that it is desirable to ask an American employee, or a foreign agent, to put his or her life on the line in some covert activity. I did this on three occasions. I would have found it very difficult to look such an individual in the eye and tell him or her that I was going to discuss this life-threatening mission with even a dozen people in the CIA who did not absolutely have to know . . .

Before my colleagues take offense let me make it clear that Admiral Turner is not saying Congress can't be trusted, and he clarifies this point later in his testimony:

> It is not a question of "Are they Members of Congress," it is a question of looking a person in the eye and saying "I am going to tell even one person who isn't involved in this in a way that is necessary to support your activities."

Former CIA Director William Colby agreed that the cases Admiral Turner cites are the kind of situations in which immediate notification is inappropriate, and I think we would all agree. One case involves the well-known rescue of American hostages in Teheran by officials of the Canadian Government. We sent a CIA officer into Teheran to assist with the rescue. The other cases involved the ill-fated Desert One rescue attempt. United States personnel flew into the desert of eastern Iran to take soil samples to ensure that the ground was firm enough for tankers carrying fuel for the rescue helicopters to land. In the third case, U.S. personnel flew into Teheran to reconnoiter and obtain trucks for the rescue teams.

Let me add that Chairman STOKES of the House Intelligence Committee, a colleague of mine on the Iran-Contra Committee, agreed that these instances are "very difficult to argue with * * *" Chairman MCHUGH of the House Intelligence Subcommittee on Legislation also agreed with Admiral Turner that operations of this type are legitimate cases for possible delay in notification. I mention what these gentlemen have to say because they are certainly as concerned as anyone else about the legitimate role of Congress in intelligence oversight. And they seem to me to be saying that, "Yes, there are circumstances where it is better to maintain some flexibility."

Let me point out that the standard Admiral Turner recommends for determining when Congress should be informed is the same standard set by this amendment. As Admiral Turner says in his testimony:

> The timeliness is not measured by a clock. The timeliness should be measured by the risk. . . . When that risk to human life is diminished sufficiently is when it is timely to notify the Congress in my opinion sir.

In the cases he described, the Carter administration waited for 3 months in the Canadian operation and 6 months in the other instances. And I don't recall anyone complaining at the time that this did not constitute timely notification.

CHILLING EFFECT ON COOPERATION

Another risk of this legislation is that the 48-hour requirement would have the effect of deterring foreign intelligence services from cooperating with us. This kind of cooperation is often critical for a successul operation.

I am aware that steps have been taken to partially resolve this problem. The original bill required that cooperating services be named in the finding. A number of services approached us to express their concern about the bill, and that requirement was eliminated. Nevertheless a chilling effect remains.

Let me read from the testimony of former CIA Director William Colby:

> With a 48-hour requirement, we would once again have to go around and hold the hands of our agents, of our liaisons, as they say, "Well now, wait a minute, the Congress is going to demand knowing everything you do within 48 hours, are you kidding? We are not going to get involved in that with you. Not a chance. . . ." Some countries still have a reservation because some of them don't have the same high respect for the membership of the committees that we do.

Mr. President, this is not a hypothetical situation. During the Canadian rescue operation in Teheran, the Canadians explicitly conditioned their assistance on President Carter's promise not to notify Congress.

This chilling effect would not only apply to other services, it could also have the effect of stifling initiatives from within our own intelligence community. This point was also made in testimony before the House Intelligence Committee. Our own people might be tempted refrain from sensitive and difficult—and completely legitimate—operations if they think these operations might be endangered by bringing in people who do not have an operational "need to know."

As Admiral Turner said:

> The problem will be that we won't know which covert actions are not proposed by the professionals because they have this concern inside. The people at the top won't hear about them, I'm afraid.

CONSTITUTIONAL PROBLEMS

The problems I have outlined so far are primarily operational problems. They involve the risk to the people involved in the operation, and the risk that other services might be scared off from cooperating with us.

But there is another problem with this legislation and that is that it unconstitutionally infringes on the President's ability to conduct intelligence operations and foreign affairs.

Lloyd Cutler, counsel to President Carter, testified that:

> It does seems to me that none of us is bright enough to devise an absolute 48 hour rule that will cover all situations and to drive the President into the refuge of a constitutionally inherent right to do something which the Congress cannot interfere with, it seems to goes too far.* * *
>
> I think myself, you have to leave a certain amount of initiative to the President, although you require him to account to you afterward.

Mr. President, Mr. Cutler in testimony before the House of Representatives on April 1, 8, and June 10 in the hearings as reported on those dates stated, and I quote from page 145 of that particular report, "I do think, though, that any kind of sooner or later duty to notify will be a powerful deterrent. It is very hard to be precise on what the right number of days is.

Whatever you pick, somebody can think of something that would take longer for which there might be a justification of secrecy, continuing secrecy."

On page 122 and 123 of those hearings, Mr. Cutler testified, and again I quote, "I do think though that you should do something about the timely notice requirement. Either put in a deadline. and as far as I am concerned I see nothing wrong with a deadline of even 3 months or 6 months, if it is as soon as feasible, but in no event later than a deadline that would be sufficient to cover most operations. Another alternative might be to impose on the President, and I do not think it can really go any lower, a duty to notify you when he has initiated a special intelligence activity but has not informed you about it. If he simply said to you, if he was required to say to you, 'I have initiated an activity which for the highest reasons of state of protection of sources or dealings with foreign powers or whatever, I cannot tell you about now,' at least then you would be alert, and every time the director of the agency came back to see you as he must, you can say 'When are you going to tell us about that particular activity?' Something like that might be a better remedy than a flat time period, particularly a 48-hour period."

Mr. President, these items that I have referred to in testimony of witnesses before the Congress are the specific items that are addressed in my amendment. My amendment would allow the President to withhold notification of the terms and precise conditions of a covert operation only, only if there is danger to the personnel that are involved, either U.S. citizens or those with whom they are directly operating. Second, if it jeopardized the cooperation of our intelligence services when this operation is critical for the U.S. interests or for the success of the operation. It would allow the President, for a limited time, to withhold transmission of findings or determinations pursuant to subsections 1 or 2 of this section. But it requires that the President shall notify the chairmen and ranking members of the Intelligence Committees, the Senate majority and minority leaders, and the Speaker and minority leader of the House of Representatives that a special activity which meets the above criteria is being conducted.

The President would not be required to report the specific finding or determination authorizing the operation or otherwise disclose the details of the activity in question.

However, lest the President use that opportunity and then withhold notification for an extended period of time, as is the concern of many, the amendment further provides that the President shall personally reconsider, each week thereafter, the reasons for continuing to limit such notice, and shall provide a statement, on a weekly basis, to the same persons who were above notified.

I believe that the combination of criteria for the withholding and notification requirements are sufficient to guard against the likelihood that the President might try to use this as a kind of broad escape hatch from the notification requirement.

Mr. COHEN. Mr. President, will the Senator yield?

Mr. McCLURE. I yield.

Mr. COHEN. Under the amendment of the Senator from Idaho, would it be possible for the President to notify the chairmen and vice chairmen of the Intelligence Committees and the leadership that he had a covert activity underway; that he could not divulge the details of it; that he would keep us apprised, on a week-to-week basis, when it would be possible to divulge that; and thereby have carried out the sale of weapons to Iran over a 10-month period without telling any Member of Congress?

Mr. McCLURE. I do not think it would have been possible, and I will tell the Senator why.

I think it would have been possible if he had to make that determination and that report once and then could just ignore it. I think that when he is required, as this would require, that he personally review and renew that—both the determination and the notification—on a weekly basis, that will limit the length of time in which a President can carry that forward.

Mr. COHEN. I say this to my good friend, with whom I served on the Iran-Contra Committee. As I recall the facts of that particular case, the President was apprised, almost on a weekly basis. Every time they had a meeting with John Poindexter and Colonel North and others, he inquired about the hostages. It seems to me the record is rather clear that he was very much concerned with their security and safety; that this matter was reviewed over a period of 10 to 15 months, if not on a weekly basis, perhaps more often. Yet, there was never any provocation on the part of anyone in the administration to notify Members of Congress. In fact, I think it was just the opposite: "Don't let any of them know what we are doing." They would not have notified any of us if the leak had not come from Mr. Ghorbanifar in the Lebanese newspaper.

Mr. McCLURE. I think the difference from that circumstance to this is that under this amendment, he would be required to make that a weekly determination and a weekly notification to Congress that that activity was continuing. I submit to the Senator that that simply would not have gone on for 10 months under these circumstances, under this amendment.

Mr. COHEN. I respectfully suggest to the contrary.

There would be nothing that Senator BOREN and I could do about this situation, where the President sends a notice to us, saying: "Mr. Chairman and Vice Chairman, I have a covert activity. I have signed a finding. It is underway, and it has been underway for a week. I will keep you posted on a weekly basis as to when I believe lives are no longer in jeopardy. And when that determination is made, I will notify the two committees."

Under that particular circumstance, it seems to me that we would be helpless, under this particular amendment of the Senator from Idaho, to do anything about it, other than saying: "Keep us posted next week. We will tune in, and if you think the circumstances have changed, we would like to know."

Mr. McCLURE. I can understand that my friend may differ with me in the conclusions as to the effect of the legislation. But I strongly feel that the notification requirement is the appropriate balance between those in Congress who do not trust the President and those in the executive branch who do not trust Congress. That is really what we are talking about here.

There have been instances in the past, and certainly they are happily in the past. I should certainly say to my friends, the chairman and the vice chairman of the Intelligence Committee—more than just parenthetically—that there have been no breaches of security or leaks from the Senate Intelligence Committee in the last months, since they have adopted the policies and taken on the leadership. I commend them for that. But I think we would both be naive and wrong to contend that there had not been leaks from the Senate prior to that time.

If I suggest that, it is also to say that, in spite of the youth and vigor and health of my friend from Maine, he may not always be here and in this role, and someone else will take that position.

So there is reason for people from the executive branch to look at Congress in its several branches and committees and say: "You have not always been as secure as is justified when lives are at stake, when U.S. security is at stake, as is the case in some cases."

The opposite side of that has to be, indeed, the concern that there have been instances when the executive branch has undertaken activities which might well have benefited from congressional oversight and congressional opinion.

I agree with the Senator from Maine in the earlier statement that certainly you cannot have sustained governmental policies that will not stand the test of suasion. If the President and the executive branch cannot persuade

Congress that it is a wise policy, and if Congress is unwilling to accept that policy, and the President cannot sell it to the American public, it is not a policy that will live long. But there are times when policies can be undertaken and activities undertaken on a much shorter basis.

I suspect, and most of us would agree, that the Grenada operation was a successful operation. I think most of us would also say that it was successful primarily because it was brief; and had it not been successful enough to be that brief, it probably would have fallen subject to the kind of criticism that divides Congress and the administration on policy.

So I agree with the Senator from Maine that consultation is important. But I do not believe we can become so concerned about the likelihood that the executive will err, that we must unduly restrict their opportunities to take actions which are in our national interests; and we cannot ignore the danger to some such operations that we have already seen occur because of the lack of security on the side of Congress.

Mr. COHEN. Let me make some general observations about the Senator's amendment.

First of all, the Senator indicated——

Mr. McCLURE. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. KERRY). The Senator from Maine is recognized.

Mr. COHEN. A few brief comments concerning the Senator's amendment.

It was a privilege to work with him and share that experience of serving on the Iran-Contra Committee. The Senator from Idaho made a number of important contributions during that debate and deliberation.

But what the Senator is saying is, how would you feel it you had to go in the field and tell your intelligence operatives, "We are going to tell Congress everything about this covert action."

That is overstating the case in order to prove a point that the Senator would like to make. But the fact is that Congress, that means first, the entire Congress, is not notified. It is confined generally to the Intelligence Committees.

Under existing law and indeed under this law that we proposed to amend the existing law, only a very few people would be notified, eight, possibly four.

So how would you feel about telling ROBERT DOLE or ROBERT BYRD about the general outlines of a covert action? That is quite different from saying what do you think about telling Congress everything about a covert activity?

Second, the reference to the Canadian intervention or help in extracting hostages out of Iran is cited as the premier example of why we should not have a mandatory notice.

The fact is that this law of notification was not in place at the time that that took place. The law was modified and changed in 1980 which was after the extrication of those hostages occurred.

So we cannot cite the Canadian example as evidence that notice was not given or timely notice was not given and not complained about.

The fact is there was no notification requirement as there was in 1980. This occurred prior to that time.

Third, I should say have everyone consider what the implications of what the amendment of the Senator from Idaho would do.

If we write into the law that the President may withold notification to Congress, if in the opinion of some third country they would not cooperate otherwise, you have invited on a wholesale basis every other country with whom we may be doing business or trying to construct a covert operation to simply say, "Don't tell Congress."

Under those circumstances in which you write such an amendment into law you have invited other countries to dictate the policy of the United States. And that would be, in my judgment, a very, very bad mistake.

For that reason alone we should not even accept the Senator's proposal.

Another point, the fourth point, is on deadlines. Perhaps it has been suggested we should have a 2-month or 3-month or 6-month deadline. The deadline does not serve any purpose for Congress' role in the formation of foreign policy, participation in foreign policy decisions.

Does it do any good for a President to say to Chairman BOREN or myself or the House, "By the way, we have had this covert action for the past several months, 3 months, 6 months. We are sorry that 200 or 300 people were killed by accident in the process of the execution of this action. We wish it had not occurred, but that was done and it was done under my executive power."

I think there would be general outrage expressed by Members of Congress. They would say, "Wait a minute. If you were to try to carry this policy out as a major foreign policy, the Foreign Relations Committee would have a role to play in this. We would have the debate as to the wisdom or lack of wisdom on this. But you undertook an operation of this consequence with these kinds of results and now you are telling us 6 months later that you are sorry. We did not take the proper precaution. We did not train the right people," or whatever the case might be.

I would like to know at that point what Members of Congress who might be tempted to support a seemingly innocent or appealing amendment such as this might respond to their constituents who would say, "Do you mean to say you allowed the President to carry out this kind of a policy with no notice? He tells you after the fact? What is your role?"

The role for the Congress can be several things. We can adopt a procedure which requires some participation and that is the purpose, frankly, of the President notifying us in advance, but if he does not notify us in advance it should be, at the very minimum, within a 2-day period. And that is so that we can go to the President and say, "Mr. President, we think this is not a good idea. You can reject our advice. You are not bound by our advice."

But if the advice comes from across the table, Republicans and Democrats alike, that this is not a wise endeavor, the President will know at some future time when it comes time for appropriations he will not have the support of that committee. It gives him pause to think about it.

As I indicated during my opening statement, there have been a number of occasions in which a finding was proposed, the committee considered it, and we went to the President. We said, "This is not a good idea. We think the bad consequences far outweigh any opportunity for success, and that will be a disaster if it is carried out, or, indeed, if it fails."

The President heeded our advice. That is our role. Not a veto but a voice.

What this would do would be simply to say Congress has no voice, not to mention no vote, but no voice in that particular policy objective. And, therefore, we are stuck with the consequences whether we like it or not.

That to me would only lead to one other consequence. If that type of amendment is ever adopted then we will be faced with simply saying no more covert actions. That is our constitutional authority to do. We can say no more appropriations for covert actions. And that is the ultimate power that the Congress has.

I think it would be a mistake. I think it would be a mistake to take that portion. But if we are left with the alternative of a time certain, 3 months, 6 months, 9 months, 10 months after an action has been initiated and carried out, it seems to me I would rather say "Mr. President, I can no longer support the agency or any other agency carrying out covert activities. From now on they will have to be conducted in public. They will be public foreign policy, no more private actions, because in fact what you are doing is you are circumventing the role of Congress in these major decisions."

With respect to Grenada I would point out in the invasion of Grenada notice was given. Do not cite Grenada as an example justifying this amendment. In Grenada they notified the congressional leaders.

So, Mr. President, I will have more to say on this tomorrow, but for all the reasons I have tried to express, I think the Senator's amendment would undercut the very basis of what we are trying to achieve, and that is to see to it that Congress does play its role as defined within the Constitution. This notion once again that somehow the President is the sole architect and executor of foreign policy is wrong. And tomorrow I will take some time perhaps to go through some of the constitutional arguments about that, but for this evening, I know there is an effort being made to terminate relatively soon, and I will reserve any comment for the time being.

Mr. BOREN. Mr. President, I have listened with great interest to the discussion between my colleagues from Idaho and the distinguished Senator from Maine, the vice chairman of the Intelligence Committee.

Let me say I understand exactly the feeling that has motivated the Senator from Idaho in offering this amendment. As the vice chairman indicated in an earlier discussion on the floor, when he in some humor referred to me as Governor Boren and referred to our earlier discussions within the committee and my concern, having had experience in the executive branch of Government, having been charged with being the chief executive of a State, I am very sensitive to the need for executives, those who bear ultimate responsibility, and certainly the responsibilities of a Governor of the State as chief executive of a State pale in comparison with the ultimate responsibilities exercised by the President of the United States as Commander in Chief.

But that experience has made me very sensitive to those special responsibilities as the Commander in Chief.

When the Members of the legislative body go home for the evening when their work is finished, just as work will be finished here in a few minutes tonight. When votes are taken, we have done our duty. We have introduced the bills. We have voted on the bills that are pending. And we go home for the night.

But the President is on duty, in essence, 24 hours a day as the final guardian of the national security interests of this country.

I felt a very, as I say, inadequate experience compared to that of the President, but one that again was instructive. I was struggling when I was Governor with a very serious prison problem in my State. We had terrible overcrowding. We had inadequate security within the prison. We had one tragic prison fire in which the institution was largely destroyed, and I worried about the lives that were at stake. I worried about the security of the guards who worked in that institution, whether they were safe and the other staff.

And once the members of the legislature voted up or down on the appropriations bills that I presented, they had done their duty and they went home, but I knew that if a problem broke out at 2 o'clock in the morning at that prison, they would not round up the State legislators in the middle of the night, but they would say, "Governor, what are you going to do about it? You have the ultimate responsibility. How much force will you use? For example, will you call out the National Guard? Will you negotiate with inmates? What if hostages are taken?"

Those are the kinds of responsibilities with which executives have to deal.

So I am very sensitive to the question and the problem raised by the Senator from Idaho, and I am not unsympathetic to it and, as he knows, I have great respect for any idea that he advances on this or any other subject. He is an able Senator and one for whom I have great respect.

I have to say, however, that on this particular question I come down on the side of the bill and come down in opposition to the way this amendment is put together.

I offered the amendment in committee, as has already been indicated, which reduced down from the so-called gang of eight all the way down to just four people in the Congress of the United States that would have to be notified if there were an extremely sensitive covert action undertaken in which lives might be at risk.

I would point out that even in the most sensitive operations of this Government in the past—the Canadian example has been mentioned—key Members of Congress, not all of Congress, not the entire Intelligence Committees, perhaps not even all of the leadership of the two Intelligence Committees were notified but key Members of Congress were notified and were kept posted on this matter.

In the commencement of the Grenada incursion and the rescue operation into Grenada—not only to rescue Americans at risk, but also help restore democratic government and operations, which I strongly supported—again key leaders in Congress were informed.

Mr. McCLURE. Will the Senator yield at that point?

Mr. BOREN. I am happy to yield.

Mr. McCLURE. I thank the Senator for yielding. I apologize for interrupting, but the Senator from Maine made reference to my reference of Grenada and said we surely should not use that example with respect to notification. I did not use that example with respect to notification. I used that example with respect to the need for consultation and the desirability of having consultation with the Congress.

Mr. BOREN. I thank my colleague. I had misunderstood the point and I appreciate his clarification of it.

But it comes down to this: I think what we have crafted now in the bill is a fair compromise between the two points of view, the two competing ideas that really have validity. One is that the President must have flexibility to act instantly, if he has to, as Commander in Chief. Nothing in this bill prevents him from doing that. He does not have to have prior approval of anyone in the Congress to act in an emergency.

He does, however, have to give notice within 48 hours to a key group of congressional leaders. We want to keep as confined as possible information about something that is highly sensitive that might be very damaging if it were revealed. We always want to hold to the smallest number possible for that information to be given. That is the reason that I have said, "let us reduce the number even further from 8 down to 4," knowing full well that I might be taking myself, as chairman of the Intelligence Committee, out of that loop.

But I was not elected by the full U.S. Senate to be chairman of the Intelligence Committee. I was appointed by the leadership in our caucus to serve on that committee and, by virtue of staying on that committee long enough, I became chairman of the Intelligence Committee under our rules.

But the Speaker and the minority leader in the House and the majority leader and minority leader of the Senate are elected by all of the Members. They bear special responsibilities. Therefore, I think we reach a point at which we finally go down as far as we can go in terms of giving any kind of meaningful notification or participation of the Congress in this process. We reduce to a bare minimum that kind of notification when we say that those four leaders, if the President deems it absolutely necessary, and only those four leaders can be notified.

It is hard for me to believe or for me to envision the situation in which a covert operation could possibly be conducted without several people in the executive branch being informed; usually a fairly large number, several score. It is almost impossible to envision that it would only be the number of the number of fingers on one hand. But surely it would not expand knowledge too far to say that these four leaders of the Congress would be notified.

And there is another purpose and let me say this: When we work in the Intelligence Committee, we are very sincere about this. When we are notified of a covert operation, I think there is a great benefit that can come from the committee's input. There is an old saying: Two heads are better than one. And it is appropriate, from the point of view of building bipartisan consensus for foreign policy, where there would be a participation and communication between both parties of Government. And that is exceedingly important.

We have seen the damage done to our country when you have an executive that starts a policy but a Congress that refuses to continue it.

We send mixed signals all around the world. So it is not just a matter of bipartisanship and important relationships and partnership between the two branches of Government that is at stake here. It is not just a matter of constitutional need for Congress which must appropriate money for these projects to also have some notification and knowledge as to what is going on.

Mr. CHAFEE. I wonder if the Senator might yield.

Mr. BOREN. If I could, I am going to complete in about 60 seconds and then I will yield the floor. I will be happy to respond to a question.

It is also the question—and I go back to the wisdom in that old saying of two heads are better than one. We in the Intelligence Committee endeavor not only to provide oversight, we try to be a valuable sounding board for the intelligence community and for the executive branch. We try to give those who are conducting these policies the benefit of our best judgment to try to help our country. We try to think of things that perhaps they have not thought about. We try to think about the impact perhaps they have not anticipated.

Mr. President, I cannot help but believe that, under our system of government, those leaders, those four leaders chosen by the two Houses of Congress, who also have a great dedication to this country and its national interests, along with the President of the United States, I cannot help but believe that some meaningful discussion of actions to be taken, some true communication, some sharing of ideas, some sharing of insight, some pooling of talent to try to help this country, I cannot help but believe that that is preferable to having the President act solely alone without the benefit of that advice, without the benefit of that knowledge, without the benefit of that communication so that if problems develop in the implementation—and sometimes they do with very sensitive programs—the congressional leaders will have been informed and be much more likely to be supportive of the President as he tries to steer the country through a very difficult passage in a sensitive situation.

So, Mr. President, I think merely noting that covert actions are taking place without telling at least the four leaders what they are would only tend to breed suspicion and distrust between the branches of Government and would only tend to drive a wedge between the branches of Government at a time when we need bipartisanship, cooperation between the two branches of Government. And, with all the challenges facing this country, above all, we need to pool out talents and our best efforts to come up with the right policy decision.

So I believe that we have struck—and it is an uneasy compromise. The Senator from Maine, quite frankly, has indicated on the floor that he felt in some ways that my amendment that was put on this bill in committee went too far in reducing the notice. I understand why there are some misgivings and why these leaders may not have the background the members of the Intelligence Committee may have to ask the right questions. But to go even further and say we will not give the four leaders information about what is going on I think simply tilts the balance too far. It is a careful balance which must be struck. I believe that we have struck it in this bill and I believe to go further would be unwise.

Mr. COHEN. Will the Senator yield?

Mr. BOREN. I am happy to yield.

Mr. COHEN. Mr. President, on the point of the benefit adhering to the administration, I would like to quote just a colloquy that occurred between myself and Mr. McMahon, the former Deputy Director of the Central Intelligence Agency, during an open hearing.

I made the statement:

I find it hard to accept the proposition now that we are looking at a 48 hour period that suddenly there may be circumstances we can't notify Congress. That this would somehow jeopardize our national security interests. Now you come forward and I believe you support the 48 hour requirement?

I would like to read what Mr. McMahon said. He said:

I do. I come from the position that this oversight Committee has to be an integral part of our intelligence program. And as such it has to be a partner, particularly since it holds the purse strings, as well as the conventional wisdom of our nation. And I also believe very strongly that unless covert action has bipartisan support it is eventually doomed for failure. I would feel very reluctant as an individual to be commissioned not to advise the committee of something and then come back in a week or two and ask the committee to support a program that requires more money and what have you. I think you have to develop a relationship of trust. And I hearken back to Mr. [Clark] Clifford's comment, it there is concern regarding the security of a Committee member, then that should be addressed immediately upon his appointment. And I believe that the Congress itself bears a burden to make sure that the membership of this Committee is the kind that won't be either a fast or slow leak.

I think that statement should be responsive to those who say that the Agency is opposed. Here is someone who has had several decades of service to the Central Intelligence Agency, and who comes out strongly in favor of 48-hour notice serving the administration and achieving a bipartisan foreign policy objective.

I thank the Senator for yielding.

Mr. BOREN. I thank the Senator from Maine. I certainly agree with the comments he has made and I think the words of Mr. McMahon speak for themselves. I think it might be the ironic result and unintended effect of this amendment offered by the Senator from Idaho that if it is passed it will be more unlikely in the future that any covert action would be appropriated or funded by the Congress. As one that feels that there are times when it is absolutely essential to the Nation to be able to undertake these operations, I think the best way for us to assure that we have the flexibility to use every tool, including sometimes the tool of secrecy on behalf of our national security interests, I think that as one who feels strongly that way, I would urge my colleagues to defeat this amendment when it comes to a vote tomorrow.

I apologize to my colleague from Rhode Island. I would be happy to yield the floor for a question to him. Also, I know my colleague from New York is waiting patiently and I apologize to him for the time that I have taken. I yield the floor and would be happy to respond.

Mr. CHAFEE. I would just like to ask a couple of questions, if I might.

Mr. BOREN. I would be happy to respond to the Senator from Rhode Island.

Mr. CHAFEE. I appreciate this. These will be relatively brief.

When the notification is given to, let us say, the chairman and ranking member of both committees, plus the leaders of the Congress, they are not asked for approval or disapproval. All they are is informed; am I not correct?

Mr. BOREN. The Senator is absolutely correct. It is purely notification and we make it clear in the bill that no veto authority is granted in the committees. If the President feels that he must proceed, whether the committees approve or not, he has the right to proceed.

Mr. CHAFEE. What constraints are made upon Members? Let us take first the four members of the Intelligence Committees that are notified. What constraints are placed upon them as far as notifying staff? Making a record of it? What takes place there?

In other words, eight people are notified, but let us just take those four. Now what happens?

Mr. BOREN. We have underlined in the law again, restated in the law and, of course, we have enforced this additionally by committee rule, that Members have an absolute responsibility, and it is stated in the bill that Congress itself has the responsibility, to safeguard information under terms in which it is given. So that would apply to notification where there is clearly a limited notice intended, those particular people notified, the four or the eight, whichever the case may be.

Mr. CHAFEE. Let us take those four.

Mr. BOREN. Those four would not have the right to notify or give information to others.

Mr. CHAFEE. Including any staff?

Mr. BOREN. That is correct.

Mr. CHAFEE. Now, let us take the other four, the majority leader, the minority leader, the Speaker and the minority leader in the House. What about them? What constraints are made on them?

Mr. BOREN. The same would be true. They would not even be free to notify even the chairmen of the Intelligence Committees. If notification was given to the President under conditions that notification be only given to those four people, those four people would be obligated to keep that notification to themselves.

Mr. CHAFEE. Now, is that spelled out in the statute?

Mr. BOREN. Let me yield to the—I think it is spelled out, and I want to make sure that it is. Let me yield to my colleague from Maine to give further answer to that question.

Mr. COHEN. It is spelled out in the statute itself. That has been our practice.

Mr. CHAFEE. I know the practice of the members of the committee, but I am talking about the leadership. Is there anything statutorily that says that they—leaders are busy. The Speaker of the House, the leader of the majority, minority leader as we all know are extremely busy people.

I think the natural reaction would be to turn to some faithful deputy and say: Make a record of that and also note that I was opposed to it, for example.

Now, is there any statutory constraint on that?

Mr. COHEN. I believe there is, in terms of the notice going only to the leadership itself.

But if the Senator would feel——

Mr. CHAFEE. I am not going to press you on that tonight, because obviously we will be on this in the morning, and perhaps if one of your staff or somebody could check, I would appreciate that.

Mr. BOREN. I would answer the Senator from Rhode Island, there is no explicit language in the pending bill which says word for word that four people so notified may not share this information with anyone else. However, the general provisions of Senate Resolution 400 under which we operate plus the rules of the Senate, I believe, would give us a sufficient capability of assuring that that notice would not be given to others.

Of course, the political approach and ultimately, I suppose, many of these sanctions are political—the consequences, the political consequences of the failure of even the gang of four or the gang of eight to keep notification, given under those conditions, solely to themselves would, I think, be so dire as to be a very important enforcement mechanism. But I would be glad to look at that and if the Senator from Rhode Island has additional suggestions to make that clear, to make that provision, this Senator would certainly be amenable to looking at those.

Mr. CHAFEE. I would like to share the confidence of the distinguished chairman of the committee that the consequences on anybody leaking information would be so dire. But I think we all recognize professional courtesy in this body; so-and-so, there is a little lapse that he said this, but so be it. Who is going to take any public outrage and demonstrate any censure on the individual? I think we recognize that those things happen.

I must say I have deep concern out of what we are doing. We all have known situations that have been of extreme importance to the security of the Nation's secrets that have not been passed on. Not all covert action has, such as the breaking of the Japanese code in World War II. Some of the instances have been outlined here on the floor by the senior Senator from Idaho. But let us just take the situation of where the proposal, in the judgment of the leadership, is outrageous, that it is the most ridiculous, preposterous undertaking they have ever heard of.

Now, what?

Mr. COHEN. Let me respond to the Senator. You served on the Intelligence Committee for a time that I served on there as well. As I recall, such a proposal in fact came before the committee while you were on it. And I recall your words, which I cannot repeat on this floor. But they were quite critical, very critical. Something to the effect that this is the most outrageous thing I have heard. I will not go into the exact details.

Mr. CHAFEE. Preposterous.

Mr. COHEN. And I was struck by the power of your feeling on that particular matter. You did not go to your staff member. You did not go out to the Senate floor. You conveyed your reaction to the Director or the Deputy Director who brought us the message and it really had an impact because they went back down to the President, back down to the While House and said, "Look, Senator CHAFEE is pretty outraged about this. Now, he has no veto, but, boy, we want to listen to him. Here is a person who served as Secretary of the Navy, knows something about the need to keep security in this country. And he is upset about this." And that had an impact.

I say that is exactly what we are trying to achieve here, so we are on the same side.

Mr. CHAFEE. Well, I would tell my friend from Maine, if his purpose in describing my role in that episode is to flatter me, he has done so.

I do remember it clearly, indeed, they did reverse their course. But what bothers me is that the tendency of somebody—in this particular situation, it did not come up because we had a discourse with the Director of the Agency—it seems to me that when somebody is outraged by a proposition and the administration says they are going to go ahead, the tendency toward keeping the security on it is greatly reduced. I do not want to go into these arguments, because the Senator from New York is waiting, but I must say I think some of the points made by the Senator from Idaho are telling ones, particularly as you recall the problems we had dealing with agents representing other nations.

We had the Freedom of Information Act that was disturbing. And that was changed. We had the disclosure of agents' names, and we cut that off, finally. I am talking about publications, of which you recall so well. We closed that off. But there is no question but what other nations are reluctant to deal with the United States in intelligence activities, and particularly when it involves their individual agents putting their lives on the line.

Mr. COHEN. Could I respond just for a moment?

First, I would ask a hypothetical question of the Senator from Rhode Island. How could you feel about being in a situation in which the amendment of the Senator from Idaho was, in fact, adopted. Under that provision the notification given before under that particular operation that you were so outraged about would not have come to you. It would say, Senator CHAFEE, I am sorry, we have a covert activity underway, but it is so sensitive—and this outrageous—but it is so sensitive that we cannot afford to trust you or any member of the committee, and certainly not the leadership with this. We will keep you posted. We will come back to you next week and let you know next week and a week after and maybe 6 months from now. We will tell you what it involved after it has occurred, and maybe after it has failed, which it would have under the circumstances you remember.

What you are doing by endorsing—I do not know whether you are endorsing the bill, or only lending moral sup-

port to the Senator from Idaho—who is, in fact, setting forth a position which will put you or put us in a position of finding out months later after the operation is complete. I would say to my friend that while you may be concerned about leaks coming from the committee, I dare say that I am not aware under our leadership, or the prior one, of any leak involving a covert operation. I remember Oliver North. Colonel North made a very dramatic presentation before the Nation about lies or lives, and about leaks coming out of the Hill. The fact is that most of the former Directors will tell you that 90 to 95 percent of all leaks come out of the executive branch, not Congress. We may get blamed for them, but most of them come from the executive branch.

But you may recall how he went on for pages of testimony talking about Congress being irresponsible and leaking. Then Newsweek magazine really took an unusual step of disclosing who the source of the leak was. It was not Members of the Congress. It was Colonel North himself. I think we have to keep that in mind before we start laying the blame of the feet of the Congress saying that we cannot keep secrets. I am not aware of any leak involving a covert activity under any prior administration as far as the Intelligence Committee is concerned.

But you say these accusations often enough and repeat them often enough, it is a notion that becomes a reality.

Mr. CHAFEE. We will have a chance to go into this further tommorrow.

Mr. BOWEN. Mr. President, let me say to my good friend from Rhode Island, if the Senator will yield, I understand his concern, and I have wrestled with this legislation a long time. I thought about it a long time before I joined in the cosponsorship. We did make changes, however, to reflect the concern that the Senator raised. For example, we changed the provision which specified what would be in the finding as it related to third countries, and to try to take into account the exact thing you are talking about.

We took it out of the finding itself and said appropriate procedures would need to be developed for providing information necessary to committees in order to reassure third countries.

So we have gone a long way, I think, in addressing that particular concern. I guess it just comes down to this: You have to weigh the pluses and minuses. We are striking a balance, and I think you have to ultimately decide is it better to have a situation where the President of the United States could conduct a covert operation potentially without ever notifying a single soul in Congress until perhaps such time as it became public through some sort of difficulty in the program itself. Unfortunately, we have been through that experience.

Is that good for the country in the long run? I have to say it is not. I think it is dangerous for the country from a number of respects. It deprives the President of the opportunity to seek the cooperation of the congressional leadership. We are not here talking about notifying the Congress. I would be against that. We are not even talking about notifying the two Intelligence Committees. In some instances, we are not even talking about notifying the chairmen and vice chairmen of the two Intelligence Committees. We are saying, should the Speaker of the House and minority leader and the majority and minority leader of the Senate be notified?

I just have to say to my good friend from Rhode Island, while I worry about every concern that he worries about, I worry about notifying anybody who does not have to be told about something that is underway where secrecy is important to the national interest of the United States. I worry about it. I think the risks run in notifying those four people who have a keen understanding of their responsibilities in this Government who know that they can exercise their opposition, express their opinions, in this case directly to the President. He is the one who will tell them and only them.

I would have a hard time in believing that you have very many, if any, situations, as we look ahead to the next century, in which this country might be operating under this law, in which that kind of procedure would be breached by those four particular individuals, and, on the other hand, balancing that minuscule risk that four people selected by their peers in these two bodies of Congress would ever violate that trust even when they had strong disagreement, weighing that minuscule risk against the great benefit and gain, both in terms of advice, shared expertise, communication, and the building of bipartisan support that the President would gain from this kind of procedure.

I think the balance clearly tilts in favor of the provision of the bill.

I think the Senator is absolutely right. We should vote down the provision every way we can to make sure the individuals, if it is a small group, four or eight who are notified, have the responsibility not to share that with others.

I have been looking at S. Res. 400. Clearly, the Intelligence Committee would be bound by it. I am not sure about the others. I would like to pursue that.

Mr. CHAFEE. I would appreciate it if by the morning somebody could check on that.

I appreciate the very eloquent presentation that both the chairman and the vice chairman have made.

Mr. BOREN. I thank the Senator from Rhode Island.

Mr. MURKOWSKI. Mr. President, during the 100th Congress, U.S. intelligence agencies have received a good deal of public scrutiny. Examples include the Iran-Contra investigation into covert programs involving the Middle East and Central America, the confirmation of a new Director of Central Intelligence, a current investigation into a FBI Counterintelligence Program, and public discussion about whether the intelligence agencies are able to adequately verify Soviet compliance with the INF Treaty—and in the future—with a START treaty.

These public issues represent only a tiny fraction of the programs and activities of the intelligence community. But, together they give a hint of the importance that intelligence has assumed in the making and conducting of U.S. foreign policy. The intelligence agencies spend vast sums of money, employ large numbers of people, and play a central role in our most vital national security programs.

For these reasons, it is crucial that the congressional oversight of intelligence be as effective as possible. The law requires that the intelligence committees of the House and Senate be kept "fully and currently informed of all intelligence activities." As a consequence, the committees are custodians of some of the Nation's most sensitive secrets.

The members of the Senate Intelligence Committee, of which I am one, take their responsibilities very seriously indeed. They fully appreciate the sensitivity of the information they possess. The professional staff of the committee has been carefully selected; over half previously worked for civilian and military intelligence agencies.

Mr. President, this bill will assist the Intelligence Committee in meeting its responsibilities by tightening up the oversight provisions, by clarifying ambiguities, and by closing loopholes in existing law. The bill has been exhaustively reviewed in a bipartisan fashion within the Intelligence Committee. Its provisions are consistent with the recommendations of the Iran-Contra Select Committee.

Mr. President, I urge my colleagues to give this bill their overwhelming support.

Mr. HEINZ. Mr. President, I support the legislation now before the Senate. The Intelligence Oversight Act is an attempt to restore order and trust to the relations between Congress and the Executive in the area of covert intelligence operations.

We all are very familiar with the horror story that goes by the name of the Iran-Contra affair. At the heart of

that scandal was the failure of the oversight system to give the Congress its proper input into the review of covert operations. The law we are considering today codifies many changes to the oversight system that have already been adopted informally by the Reagan administration. I believe that this legislation will lay the basis for effective congressional oversight of covert operations without undercutting the President's constitutional responsibilities in the area of foreign policy.

The law leaves the President the option of informing only the top four leaders of the Congress in cases of dire threat to the national security. I believe this provision adequately addresses the two competing needs in the oversight of covert operations: the need for secrecy, and the need for congressional participation.

Mr. President, I think that most observers would agree that the Iran-Contra affair would never have happened had regular congressional oversight been allowed to play its proper role. Congressional oversight of covert operations is not a form of competing authority in foreign policy—it is a check on unwise projects that cannot win the support of the Congress in the long term. It is clear that foreign policy is most effective and sustainable when Congress is part of the support for that policy. Oversight of intelligence operations has proven to be a secure and effective way of providing that congressional support.

I believe the Intelligence Committee has done a good job with this legislation, and I am hopeful that it will help make policy disasters such as occurred in the Iran-Contra affair a thing of the past.

## ORDER OF PROCEDURE

Mr. D'AMATO. Mr. President, I ask unanimous consent to speak for no more than 10 minutes as if in morning business.

The PRESIDING OFFICER (Mr. SANFORD). Without objection, it is so ordered.

(The remarks of Mr. D'AMATO, Mr. KERRY, Mr. HEFLIN, and Mr. MURKOWSKI pertaining to the introduction of legislation appear later in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

## APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 94-201, appoints William L. Kinney, Jr., of South Carolina, to the Board of Trustees of the American Folklife Center, effective March 19, 1988, for a 6-year term.

Mr. MURKOWSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I understand that the distinguished Senator from Alaska, Mr. MURKOWSKI, may have to leave, and so I shall proceed with the morning business that we have to transact.

## MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 STATUTE OF LIMITATIONS EXTENSION

Mr. BYRD. Mr. President, I ask that S. 2117, a bill to extend the statute of limitations applicable to certain claims under the Age Discrimination in Employment Act of 1967 now at the desk be read for the first time.

The PRESIDING OFFICER. The clerk will read the bill.

The assistant legislative clerk read as follows:

A bill (S. 2117) to extend the statute of limitations applicable to certain claims under the Age Discrimination in Employment Act of 1967 that were filed with the Equal Employment Opportunity Commission before the date of enactment of this act.

Mr. BYRD. Mr. President, I now ask for the second reading.

Mr. MURKOWSKI. Mr. President, I must object on behalf of our side of the aisle.

The PRESIDING OFFICER. Objection is heard.

Objection having been heard, the bill will lay over a legislative day pending its second reading.

## INDEFINITE POSTPONEMENT OF S. 1904

Mr. BYRD. Mr. President, I ask unanimous consent that S. 1904, the Polygraph Protection Act of 1987, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RETIREMENT AND SURVIVOR ANNUITIES FOR BANKRUPTCY JUDGES AND MAGISTRATES ACT

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 570, S. 1630, a bill to provide for retirement and survivors' annuities for bankruptcy judges and magistrates.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1630) to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HEFLIN. Mr. President, today I urge the passage of Senate bill 1630, the Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act. The purpose of this legislation, as stated in the committee report, is "to provide bankruptcy judges and magistrates with an adequate pension upon retirement from service on the bench" (committee report, 100-293). Under the current retirement system, a bankruptcy judge or magistrate must remain on the bench for many years to assure an adequate pension. However, because of the qualifications required of these judicial offices, many individuals do not "assume these offices" until they are in the middle of their careers. In fact, many of these individuals leave very lucrative law practices in order to seek these judicial appointments.

I introduced this legislation, along with my colleagues, Senator GRASSLEY and Senator DECONCINI, in August 1987. Since introduction, several of my colleagues have joined as cosponsors, including Senator THURMOND, who is the ranking member of the Senate Judiciary Committee, and Senators KASSEBAUM, COCHRAN, CHILES, JOHNSTON, HATCH, COHEN, DURENBERGER, INOUYE, LUGAR, MATSUNAGA, PRYOR, and BUMPERS.

The Subcommittee on Courts and Administrative Practice held hearings on October 28, 1987, and the subcommittee reported the bill to the Judiciary Committee on November 18, 1987, without amendment. The committee ordered the bill to be reported on December 3, 1987, again without amendment.

We are all aware of the tremendous burdens placed upon our Federal judicial system, but I am not certain that we appreciate the tremendous contributions made by bankruptcy judges and magistrates.

Bankruptcy judges are appointed for 14 year terms and magistrates are ap-

pointed for 8 year terms. The responsibilities assigned to magistrates and bankruptcy judges, while of different character, are of equal importance. The committee report clearly illustrates the tremendous workload of these judicial officers.

Since the passage of the Bankruptcy Reform Act 1978, the number of bankruptcy petitions filed each year has increased from 226,471 in 1979, to 561,278 in 1987. The Administrative Office of the United States Courts projects further filing increases to 775,000 petitions by 1989. The caseload of bankruptcy judges includes many routine consumer cases which require minimal judicial involvement. Yet, a significant 16% of the total filings consist of business cases, both reorganizations, and liquidations. During the 1987 reporting year, there were more than 22,500 chapter 11 business reorganization cases filed. As a result of the enactment of bankruptcy relief provisions for family farmers in 1986, more than 5000 petitions have been filed under new chapter 12 created by that legislation. The impact of the decisions of bankruptcy judges on the national economy is substantial and felt on a daily basis. During the fiscal year that ended June 30, 1987, magistrates handled approximately 466,000 proceedings. In particular, magistrates conducted over 134,000 preliminary proceedings in felony cases; handled more than 197,000 references of civil and criminal pretrial matters; reviewed more than 6,500 Social Security appeals and more than 27,000 prisoner filings; and tried more than 95,000 misdemeanors and 4,900 civil cases on consent of the parties. A substantial portion of the work of magistrates is performed in cases assigned to article III judges. Absent the assistance provided by magistrates, the number of judgeships clearly would have to be increased. (Committee report 100-293, at 2-3)

It is incumbent upon us to ensure that the judicial branch is able to attract and retain qualified individuals for these positions.

These judicial officers are compensated at 92 percent of the pay of district court judges. But the retirement system for these individuals falls far short.

This legislation provides that a bankruptcy judge or a magistrate is entitled at age 65 and after the completion of 14 years of judicial service to an annuity equal to the salary of the position at the time he or she left office. Judicial service performed since October 1979, is eligible for credit under this legislation. Service of less than 14 years in office but equal to or greater than 8 years, is eligible for a pro rated annuity benefit. No contribution is required by the judicial officer for this plan. This legislation will also include spouses and dependents of bankruptcy judges and magistrates within the judicial survivor annuities if the bankruptcy judge or magistrate elects to participate in the judicial survivor's annuity system.

The retirement benefits proposed under this legislation are necessary if we are committed to an experienced and stable judicial system.

Without an enhanced retirement system, qualified judicial officers will continue to leave the bench for more profitable service in the private sector. This causes instability in our judicial system and weakens the system from within. Our courts are only as good as the individuals who administer justice from the courtroom. We demand excellence from our judicial officers. We should be willing to provide them with a retirement system that provides an adequate pension after their service on the bench.

There is an amendment which I will offer for consideration which changes the effective date of the legislation from the date of enactment to July 31, 1987. Several bankruptcy judges and magistrates have retired since the introduction of this legislation and I have heard from many of my colleagues who believe that it is unfair to arbitrarily draw a date that excludes some individuals who have been on the bench for many years. I quite agree. The other changes to the bill are technical in nature and simply correct a numbering mistake and, add the phrase "of title 5" in a section where it is omitted when the bill was originally introduced.

I would like to thank the ranking member of the subcommittee, Senator GRASSLEY, for his assistance in moving this legislation, as well as the other members of the judiciary committee, particularly, Senator BIDEN the chairman of the committee, Senator THURMOND, the ranking member and Senator DECONCINI.

I would also like to express by gratitude to the Staff members who have worked on this legislation for the past several months: Sam Gerdano with Senator GRASSLEY; Terry Wooten and Kevin McMahon with Senator THURMOND; Ed Baxter with Senator DECONCINI; and Diana Huffman, of the full committee, for her assistance.

I hope this legislation can be enacted without further delay.

Thank you Mr. President.

Mr. THURMOND. Mr. President, I rise today in strong support of S. 1630, the "Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987". I am a cosponsor of this legislation which provides a much needed revision of the current retirement system in place for bankruptcy judges and Federal magistrates.

Unquestionably, bankruptcy judges and Federal magistrates play an important role in our Federal judicial system. Because of their vital role, an equitable retirement system is necessary to encourage exceptionally well-qualified individuals to seek these judgeships and serve for many years before retirement.

With the steady growth of litigation in our Federal system, we have placed a greater responsibility on the shoulders of both bankruptcy judges and Federal magistrates. These enhanced burdens and responsibilities, along with the shortcomings in the current retirement system, have contributed to an increased turnover rate among these judges in the last several years.

If enacted, S. 1630 will establish a retirement system similar to the current retirement system in place for territorial judges. After serving a period of 14 years, and upon reaching the age of 65, bankruptcy judges and Federal magistrates would be entitled to a retirement pension at full salary.

I believe legislation such as this will go a long way toward ensuring that we continue to attract and retain quality individuals dedicated to serving the public. Therefore, I support S. 1630, and urge my colleagues to do the same.

Mr. GRASSLEY. Mr. President, I would like to commend our subcommittee chairman, Senator HEFLIN, for his leadership on this bill to make badly needed improvements in the retirement system for bankruptcy judges and magistrates. I am pleased to be an original cosponsor.

This bill addresses the current disparity in retirement benefits between bankruptcy judges and magistrates, and other Federal judges. The bill provides for a new retirement system and survivors' benefits based on the system already in place for territorial judges. The bill recognizes that bankruptcy judges and magistrates, each with fixed terms of office, may have limited years of Federal service compared with article III, life tenured, judges.

Accordingly, the bill provides for retirement at age 65 on the full salary being paid at the time a retiree left office if 14 years of service as a bankruptcy judge or magistrate had been completed. The bill also provides for reduced retirement benefits for those judicial officers who have served at least 8 years but less than 14. Such benefits would be based on the percentage of the years of service compared to 14 years.

Mr. President, we need to enhance the retirement system for bankruptcy judges and magistrates. Current law acts as a powerful disincentive to the recruitment and retention of qualified judges and magistrates. In fact, since 1980, more than 160 bankruptcy judges have left the bench. Many have gone on to lucrative private law practice.

Since 1985 alone, nearly one-third of our 232 bankruptcy judges have resigned or retired. To give some context to this statistic, only 7 percent of district and appeals court judges have resigned or taken senior status during this same period.

In large measure, these judges have left the bench because of an inadequate retirement policy.

Mr. President, although we often fail to realize it, I think it's fair to say that no Federal court touches the Nation more than our bankruptcy courts. Its caseload, already the largest of any Federal court, recently surged past 725,000—more than double the size of 6 years ago. By one estimate, the court's reach extends to more than $100 billion in corporate and individual assets and 35 million creditors. More and more, bankruptcy courts are forced to make tough choices on the survival of entire industries. So I appreciate the importance of the Bankruptcy courts and the critical role they play in our legal system.

As we all know, the 99th Congress authorized the creation of 52 additional, and badly needed, bankruptcy judgeships. In this Congress, we have provided funding for these judgeships in the supplemental appropriations bill. The continuing appropriations bill increased bankruptcy judges and magistrates salaries back up to 92 percent of that of district court judges. But without a sufficient benefits package to offer these applicants. We will continue to have difficulty attracting and keeping qualified judges.

I urge my colleagues to support the bill, and hope the other body will act in accord.

AMENDMENT NO. 1624

(Purpose: To clarify the application of the Act and to make technical corrections)

Mr. BYRD. Mr. President, on behalf of Mr. HEFLIN I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia, Mr. BYRD, for Mr. HEFLIN proposes an amendment numbered 1624.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, line 16, strike out "the efffective date of this Act" and insert in lieu thereof "July 31, 1987".

On page 11, line 1, after "(c)" insert "of title 5".

On page 11, line 3, strike out "(5)" and insert in lieu thereof "(7)".

On page 11, line 15, strike out "the date of enactment of this Act." and insert in lieu thereof "July 31, 1987. A bankruptcy judge or magistrate retiring on or after July 31, 1987, but before the date of enactment of this Act, shall be entitled to make an election under section 2(c)(2) of this Act within 90 days after such date of enactment.".

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1624) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider that vote by which the amendment was agreed to.

Mr. MURKOWSKI. I move to lay that motion on the table. The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1630

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Retirement and Survivor Annuities for Bankruptcy Judges and Magistrates Act of 1987".

BASIC RETIREMENT PROGRAM

SEC. 2. (a) Chapter 17 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 377. Retirement of bankruptcy judges and magistrates

"(a) A bankruptcy judge or magistrate to whom this section applies who retires after serving at least 14 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate left office.

"(b) A bankruptcy judge or magistrate to whom this section applies who retires after serving less than 14 years but at least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (e), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that proportion of the salary being received at the time the judge or magistrate left office which the aggregate number of years of service bears to 14.

"(c) A bankruptcy judge or magistrate to whom this section applies who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (e), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14 years, bears to 14.

"(d) A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

"(e) A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84, of title 5.

"(f)(1) For purposes of calculating an annuity under this section—

"(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

"(B) each month of service shall be credited as one-twelfth of a year.

"(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a United States magistrate to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

"(B) In the case of an individual who is a magistrate to whom this section applies and who retires or is removed from office upon the sole ground of mental or physical disability, service of that individual as a bankruptcy judge to whom this section applies, if any, shall be included for purposes of calculating years of service under subsection (a), (b), or (c), as the case may be.

"(g) This section applies to—

"(1) any bankruptcy judge appointed under—

"(A) section 152 of this title;

"(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

"(C) section 404 of the Act of November 6, 1978 (Public Law 95-598, 92 Stat. 2549); and

"(2) any United States magistrate appointed under section 631 of this title,

only with respect to service on or after October 1, 1979, as such a bankruptcy judge or magistrate.".

(b) The table of sections at the beginning of chapter 17 of title 28, United States Code, is amended by adding at the end the following new item:

"377. Retirement of bankruptcy judges and magistrates.".

(c)(1) A bankruptcy judge or United States magistrate in active service on July 31, 1987 shall, subject to paragraph (2), be entitled to, in lieu of the annuity otherwise provided under the amendments made by this section—

(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

(B) an annuity calculated under subsections (b) and (f) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)), without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (b) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate

leaves office which the years of service bears to 14, and

(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate in effect on the day before the retirement becomes effective.

(2) A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

(3) A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a credit under section 8342 or section 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

(4) With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this section; and

(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted in subsection (e) of section 375 of such title.

JUDICIAL SURVIVORS' ANNUITIES

SEC. 3. (a) Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended by—

(A) striking "or" at the end of subparagraph (D);

(B) adding "or" after the semicolon at the end of subparagraph (E); and

(C) inserting after subparagraph (E) the following:

"(F) a full-time bankruptcy judge or a full-time United States magistrate;"; and

(D) inserting after the semicolon at the end of clause (iii) the following: ", or who, in the case of a full-time bankruptcy judge or United States magistrate, notifies the Director in writing of his or her intention to come within the purview of this section on or before the date of an election to retire under section 377 of this title;".

(2) Subsection (a)(2) is amended by—

(A) striking out "and" at the end of subparagraph (D);

(B) inserting "and" after the semicolon at the end of subparagraph (E); and

(C) adding at the end the following:

"(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title;".

(b) In the case of a bankruptcy judge or magistrate who elects an annuity under section 2(c), only service for which an annuity under subsections (b) and (f) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.

AMENDMENTS RELATED TO RECALL

SEC. 4. (a) Section 155(b) of title 28, United States Code, is amended—

(1) by inserting "section 377 of this title or in" after "annuity in"; and

(2) by inserting "which are applicable to such judge" after "title 5".

(b) Section 375 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "under the provisions of section 377 of this title or" after "was retired";

(2) in subsection (c) by inserting "under the provisions of section 377 of this title or" after "annuity provided"; and

(3) in subsection (g) by inserting "who retired under the applicable provisions of title 5" after "section".

(c) Section 636(h) of title 28, United States Code, is amended in the second sentence—

(1) by inserting "section 377 of this title or in" after "annuity set forth in"; and

(2) by inserting "which are applicable to such magistrate" after "title 5".

TECHNICAL AMENDMENTS

SEC. 5. Section 631(e) of title 28, United States Code, is amended—

(1) by striking out "(j)" and inserting in lieu thereof "(k)";

(2) by striking out "(i)" and inserting in lieu thereof "(j)"; and

(3) by striking out "(h)" and inserting in lieu thereof "(i)".

CONFORMING AMENDMENTS

SEC. 6. (a) Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

"(4) Notwithstanding any other provision of law, a judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump sum credit under section 8342(a) of this title.".

(b) Section 8402(c) of title 5 of the United States Code, is amended by adding at the end the following new paragraph:

"(7) A judge or magistrate who is covered by section 377 of title 28 or section 2 of the Retirement of Bankruptcy Judges and Magistrates Act of 1987 shall be excluded from the operation of this chapter if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a credit under section 8424 of this title.".

EFFECTIVE DATE

SEC. 7. This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to bankruptcy judges and magistrates who retire on or after July 31, 1987. A bankruptcy judge or magistrate retiring on or after July 31, 1987, but before the date of enactment of this Act, shall be entitled to make an election under section 2(c)(2) of this Act within 90 days after such date of enactment.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## DULLES RESOLUTION

Mr. MURKOWSKI. Mr. President, I send a concurrent resolution to the desk on behalf of Senator DANFORTH and others and ask that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, the concurrent resolution will be placed on the calendar.

## THANKS TO SENATOR SANFORD

Mr. BYRD. Mr. President, I wish to thank the distinguished Presiding Officer, Mr. SANFORD, for returning to the floor. After I had announced there would be no more rollcall votes earlier today, Senator SANFORD went home, but he returned when no other Senator was available to do the Chair duties. I thank him for returning and I thank him for presiding over the Senate so ably. I always appreciate his courtesies which are very characteristic of him.

## SENATOR MIKULSKI INDUCTED INTO MARYLAND WOMEN'S HALL OF FAME

Mr. BYRD. Mr. President, on Tuesday evening our colleagues, the able junior Senator from Maryland [Ms. MIKULSKI], was inducted into the Maryland Women's Hall of Fame in recognition of her many valuable contributions to the State of Maryland and the Nation.

This is an honor which the junior Senator from Maryland richly deserves. Prior to her election to the Senate, Ms. MIKULSKI had an illustrious career as a Member of the House of Representatives and as a member of the Baltimore City Council.

She was elected to the Senate for the 100th Congress. In the short period of time that she has served in this body, the junior Senator from Maryland has rapidly become an effective legislator and a tenacious advocate for the needs of Maryland. She is an efficient Presiding Officer over the Senate and she has performed excellently during her assigned presiding times and she very actively participates in committee work.

The junior Senator from Maryland is a valuable Member of the U.S. Senate and I congratulate her on this most recent honor. I look forward to serving with BARBARA MIKULSKI during the rest of the 100th Congress and for many years to come.

## PHILIP T. CUMMINGS

Mr. BURDICK. Mr. President, I rise to acknowledge nearly two decades of

service to the Environment and Public Works Committee by Phil Cummings, chief counsel to the committee.

Phil began his work with the committee under the direction of my good friend and former chairman, Senator Jennings Randolph of West Virginia. Since 1970 by his work for the committee and through his actions Phil has epitomized the definition of public service. In no small measure, the quality of the air Americans breathe and the water we drink are better because of his dedicated efforts. Day in and day out, by the strength of his intellect and his understanding Phil proved that an individual can make a difference.

Mr. President, the Congress is blessed with capable and dedicated staff. They labor in obscurity. They believe that public service is an honorable calling. They have deep interest in and genuine concern for public affairs. The quality of Government, and therefore of life in America, depends to a very large degree on who serves as congressional staff and how they serve. Phil Cummings is one of the best. The Committee on Environment and Public Works, the Senate and indeed this country have been the beneficiaries of his work. Phil has left his mark.

I know that I speak for all the present and former members of the Environment and Public Works Committee in expressing our appreciation to Phil for his years of dedicated service and wish him nothing but the best in his new career. He will be missed.

## TRIBUTE TO PHILLIP CUMMINGS

Mr. STAFFORD. Mr. President, earlier this week Mr. Phillip Cummings, counsel to the Committee on Environment and Public Works, left the employ of the U.S. Senate.

Mr. Cummings and I arrived in the Senate within months of each other nearly 18 years ago, so it is fitting that the two of us—he at the staff level and myself at the Member level—are leaving this institution.

There are those who distinguish sharply between the role of staff and the role of Senators in this body. But the truth is that staff often become as much a part of the institution as the Members whom they serve, and make contributions which are just as enduring, though often less visible. Such is the case with Mr. Cummings.

Mr. Cummings drafted and helped enact every major environmental law of almost two decades, and many public works statutes as well. No member of the staff has made a contribution exceeding his and few have equalled it. Despite this, his contribution was often less than obvious. He was, and I am sure shall remain, a master at allowing others to take the credit for his work.

There are some Members who would say that a generation of staff learned their skills at his knee, in a manner of speaking. Usually that has been intended as a pejorative. Nevertheless, there is a great deal of truth in that statement. Many of us—staff and Members alike—learned from him and, hopefully, he from us. That has been the strength of the Committee and Environment and Public Works through the years: a collaborative spirit in which each of us borrowed the strengths of others to overcome our weaknesses. Phil Cummings is a man who brought strength, skill, intelligence, and insight to those dealings, and we shall miss him.

I wish him the very best and, on behalf of the millions of Americans who have benefited from his 18 years of public service, express appreciation.

I ask unanimous consent that the RECORD record a list of some of the legislation that bears Phil Cummings' imprint.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A FEW OF THE LAWS WHICH BEAR PHIL CUMMINGS' IMPRINT

| Public Law No. | Title | Bill No. | Date |
|---|---|---|---|
| 91st Congress 1969–70 | | | |
| 91–137 | Clean Air Act Research Appropriations. | S. 2276 | Dec. 5, 1969. |
| 91–224 | Water Quality Improvement Act of 1969. | H.R. 4148 | Apr. 3, 1970. |
| 91–304 | Public Works and Economic Development Act. | H.R. 15712 | July 6, 1970. |
| 91–512 | Resource Conservation and Recovery Act of 1970. | H.R. 11833 | Sept. 26, 1970. |
| 91–604 | Clean Air Amendments of 1970. | H.R. 17255 | Dec. 31, 1970. |
| 91–605 | Federal-Aid Highway Act of 1970. | S. 4418 | Dec. 31, 1970. |
| 92d Congress 1971–72 | | | |
| 92–500 | Water Pollution Control Act Amendments of 1971. | S. 2770 | Oct. 18, 1972. |
| 92–532 | Marine Protection, Research Act of 1971 (Ocean Dumping). | H.R. 9727 | Oct. 23, 1972. |
| 92–574 | Noise Control Act of 1971. | H.R. 11021 | Oct. 27, 1972. |
| 99d Congress 1973–74 | | | |
| 93–87 | Federal-Aid Highway Act of 1973. | S. 502 | Aug. 13, 1973. |
| 93–207 | Federal Water Pollution Control Act Amendments. | S. 1776 | Dec. 28, 1973. |
| 93–239 | Emergency National Maximum Highway Speed Limit Act (55 MPH). | H.R. 11372 | Jan. 2, 1974. |
| 93–319 | Clean Air Act Amendments. | S. 2680 | June 22, 1974. |
| 93–611 | Solid Waste Disposal Act Extension. | H.R. 16045 | Jan. 2, 1975. |
| 94th Congress 1975–76 | | | |
| 94–280 | Federal-Aid Highway Act of 1976. | S. 2711 | May 5, 1976. |
| 94–369 | Public Works Employment Act. | S. 3201 | July 22, 1976. |

A FEW OF THE LAWS WHICH BEAR PHIL CUMMINGS' IMPRINT—Continued

| Public Law No. | Title | Bill No. | Date |
|---|---|---|---|
| 94–580 | Solid Waste Utilization Act of 1976. | S. 2150 | Oct. 22, 1976. |
| 94–587 | Water Resources Development Act of 1976. | S. 3823 | Oct. 19, 1976. |
| 95th Congress 1977–78 | | | |
| 95–95 | Clean Air Act Amendments of 1977. | H.R. 6161 | Aug. 7, 1977. |
| 95–190 | Safe Drinking Water Act Amendments of 1977. | S. 1528 | Nov. 11, 1977. |
| 95–217 | Water Pollution Control Act Amendments of 1977. | H.R. 3199 | Dec. 27, 1977. |
| 95–599 | Federal-Aid Highway Act of 1978. | H.R. 11733 | Nov. 6, 1978. |
| 96th Congress 1979–80 | | | |
| 96–502 | Safe Drinking Water Act Amendments. | H.R. 8117 | Dec. 5, 1980. |
| 96–510 | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund). | S 1480 | . |
| 97th Congress 1981–82 | | | |
| 97–23 | Clean Air Act Amendments (steel stretchout). | H.R. 3520 | July 17, 1981. |
| 97–327 | Federal-Aid Highway Act... | S. 2574 | Oct. 15, 1982. |
| 98th Congress 1983–84 | | | |
| 98–313 | Environmental Programs Assistance Act. | S. 518 | June 12, 1984. |
| 98–616 | Solid Waste Disposal Act Authorizations. | H.R. 2867 | Nov. 9, 1984. |
| 99th Congress 1985–86 | | | |
| 99–339 | Safe Drinking Water Act Amendments of 1986. | S. 124 | June 19, 1986. |
| 99–499 | Superfund Amendments and Reauthorization of 1986. | H.R. 2005 | Oct. 17, 1986. |
| 99–519 | Asbestos Hazard Emergency Response Act. | H.R. 5073 | Oct. 22, 1986. |

## TRIBUTE TO JUDGE JOHN B. SOCKWELL

Mr. HEFLIN. Mr. President, it is with sadness that I rise, today, in tribute to Judge John B. Sockwell, of Tuscumbia, AL, who passed away several weeks ago. Judge Sockwell served for many years as the probate judge of Colbert County, my own county in Alabama, and also served in various other county positions. He was a great man who was devoted to public service, for its own sake, and for its own rewards. He served the people of my county in an outstanding capacity.

There is vanishing from the American scene the truly great county officials. Judge Sockwell's life signifies the best in service to his area. He possessed a combination of rare qualities which made service to our community, our county, and our State his only goal. He was a man of impeccable integrity, of tireless energy, and of tremendous intelligence which resulted in true service to his fellow citizens.

We are thankful for his efforts and will never forget his work.

Judge Sockwell first started as sheriff of Colbert County. He was an outstanding sheriff, and people recognized his willing efforts to serve the public interest. He was then promoted by the support and vote of the people to the highest position which can be held by a county official, that of probate judge, which is the head of the county governing body. Judge Sockwell was an excellent judge. He was the embodiment of wisdom and jurisprudence. Like all good judges, his most notable accomplishments were made through his hard work and great judgment. During his tenure, he earned the trust, the respect, and the admiration of the people of Colbert County. Perhaps more tangible—although not more important—accomplishments were his work in overseeing the construction of the Muscle Shoals Airport and the north addition to the Colbert County Courthouse.

Mr. President, there are a few elected officials who the public does not allow to retire from public office. Judge Sockwell enjoyed this type of support. Even after he retired from the position of probate judge, he was drafted by public demand back into office, being elected as the chairman of the Colbert County Board of Revenue—now the county commission.

Throughout his lifetime, Judge Sockwell worked to contribute to our community in civic affairs and in trying to attract business to the county in addition to his work in public office. He was chairman of the First Baptist Church of Tuscumbia Board of Deacons, was a charter member of the Helen Keller Property Board, and he assisted with organizing Hope Haven. Additionally, he was president of the Tuscumbia Chamber of Commerce, the Tuscumbia Kiwanis Club, was district chairman of the Boy Scouts of America, and was on the board of the Salvation Army.

Judge Sockwell devoted his life to our community and region. His efforts remain as an example of selfless service to others. He was also a great friend and I will miss him, a sentiment I am sure that is shared throughout Colbert County. Yet, I believe that his example stands as a guide for others to follow. The values and attitudes that he held should be embraced by all, for that is our duty as citizens of this great Nation.

I ask unanimous consent that the attached newspaper article be printed in the CONGRESSIONAL RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EX-COLBERT PROBATE JUDGE SOCKWELL DIES

Tuscumbia.—Former Colbert County Sheriff and Probate Judge John B. Sockwell, 92, 109 E. Second St., died Saturday, Feb. 13, 1988, at Helen Keller Memorial Hospital, Sheffield.

He was chairman of the Colbert County Board of Revenue (now the County Commission) during construction of the Muscle Shoals Airport and the north addition to the County Courthouse. He was chairman of the First Baptist Church—Tuscumbia Board of Deacons, a charter member of the Helen Keller Property Board, which developed Ivy Green, and he assisted with organizing Hope Haven.

He was also president of the Tuscumbia Chamber of Commerce and Kiwannis Club, District Chairman of the Boy Scouts of America, and was on the Salvation Army Board.

The funeral will be 2 p.m. Monday at First Baptist Church—Tuscumbia with the Rev. William Austin officiating. Burial will follow at Colbert Memorial Gardens with Morrision Funeral Home, Tuscumbia, directing.

The family will receive friends from 6-8 p.m. tonight at the funeral home. The body will be at the church one hour before the service. Memorials may be made to the First Baptist Church—Tuscumbia Educational Trust Fund.

Survivors include his son, Leon D. Sockwell, Tuscumbia; daughter, Dorothy S. Kennemer, Tuscumbia; sister-in-law, Ella H. Sockwell, Florence; five grandchildren and three great-grandchildren.

Honorary bearers include members of the mens class at the First Baptist Church—Tuscumbia.

## TRIBUTE TO WILLIAM H. MITCHELL III

Mr. HEFLIN. Mr. President, I am honored to rise, today, to pay tribute to my good friend, William H. Mitchell III, of Florence, AL. Throughout his life, Bill Mitchell has worked to contribute much to the people of the city of Florence, to the quad city area, and, indeed, to my home State of Alabama. He is one of those rare individuals who believes that each citizen owes something to society and he has endeavored to enrich his community and our State with his care and efforts.

Because of his extended work on behalf of the Shoals area, Bill was honored earlier in the year by the Shoals area Chamber of Commerce with the Lifetime Achievement Award. I know that Bill greatly appreciates this recognition by his fellow citizens. He is a quiet person and moves without a lot of noise to accomplish a great deal. Knowing him the way I do, however, he probably offered some protests that he did not deserve the award and that he had merely been performing his civic duties. Yet, I can think of no individual who was more deserving of this recognition. Bill Mitchell has made tremendous contributions on behalf of our communities in the Shoals area, and throughout his life he has won the respect, the admiration, and the gratitude of the people of the area, and the people of Alabama.

Bill Mitchell is from a family that has a distinguished history and a long tradition of public service and involvement in my State. His great grandfather, Rev. William H. Mitchell, was a Presbyterian minister who was arrested and taken from the pulpit of the First Presbyterian Church of Florence by Union Troops during the War Between the States for praying for the success of the Southern Confederacy. Bill's father, William H. Mitchell II, was a great attorney in Florence who served during his career as the president of the Alabama State Bar. His grandfather, J.J. Mitchell, was a well-known judge. Both of these gentlemen made many notable contributions to the law in Alabama and to the Shoals area.

Bill has followed in the outstanding example of his family and has continued the Mitchell family's tradition of being a cornerstone in the community and our State. I believe that his record demonstrates his tremendous service. He attended Davidson College. Soon after the outbreak of World War II he joined the Army and served to the rank of technical sergeant, earning the Legion of Merit, and the Bronze Star with Oak Leaf Cluster. In 1946 he received his law degree from the University of Alabama, and then joined the Florence law firm of Mitchell & Poellnitz, the firm which his father had founded.

In 1958 Bill became president and chief executive officer of the First National Bank of Florence. As a result of his able leadership, the bank has grown from $23.6 million in assets with three offices to almost $300 million in assets and eight offices today. Bill has been recognized by his colleagues in the banking business for his outstanding abilities. He has served as president of the Alabama Banking Association, as State vice-president of the American Bankers Association, and as a former director of the Birmingham branch of the Federal Reserve Bank of Atlanta.

In addition to the contributions Bill Mitchell has made to his professions, He has been active in working to recruit business to the quad cities area and to Alabama. He served as director of the Florence-Lauderdale Industrial Expansion Committee, as president of the Florence Chamber of Commerce, and as director of the Alabama State Chamber of Commerce. He has played an instrumental role in making possible the coordinative efforts that now mark the Shoals area and the spirit of partnership that now mark Lauderdale and Colbert Counties, and he has really set the example for all to follow in these efforts.

I remember once when Bill made a speech to the officials and directors of one of the largest industries in north Alabama. He admitted that, at times, the four cities and two counties have been divided under certain circum-

stances. However, he continued to say that in times of great need, or in times when the possibility arose that the quad city area and Alabama as a whole would benefit, citizens and officials in the Shoals area have always combined efforts and pulled together. He cited as an example the work of Colonel Worthington, who had brought the area together when the Tennessee Valley Authority Act was passed. Bill Mitchell has reminded the citizens of our communities that we all need to pull together to reach our full potential, and accomplish all of our goals.

Bill Mitchell has also played a leading role in civic affairs and in organizations that serve the community. He has given willingly of his time and his efforts to ensure the vitality and success of various organizations. He has served as a director of the public hospital board of Lauderdale County and the city of Florence, as past chairman of the American Red Cross chapter, and as past director of the United Way of Lauderdale County. He is a member and past president of the Florence Rotary Club. He has served as chairman of the Muscle Shoals Regional Library, and as a trustee of the Alabama Department of Archives and History.

Among his most important contributions have been those on behalf of the University of Alabama, for which he has served as a trustee. His father also served as a trustee for the University, and it has been appropriate for Bill to follow in that capacity and further the already significant contributions that the Mitchell family has made to education in our State. Bill has served the University of Alabama in other capacities, as well, having been a member of the University of Alabama Presidential Advisory Search Committee, and the board of visitors of the University of Alabama College of Commerce and Business Administration, and having served as vice president of the University of Alabama Alumni Association.

Finally, Bill Mitchell has been an active member of his church, the First Presbyterian Church of Florence, and has been a ruling elder of the church.

Mr. President, I believe that the real tribute to my friend Bill Mitchell lies in a review of the many activities in which he has been involved, the good works for which he is responsible, and the many close friends with which he is blessed. He is the kind of person who is not content to leave things the way he sees them, but wants to make them better. More importantly, he is a person who helps others to become better. At the awards banquet where he received the lifetime achievement award, Bill said that, "I have never met a person who I did not learn something from and who did not mean something special to me." Bill Mitchell is the kind of person whose actions speak louder than his words. Yet, I believe these words come close to describing him and his special personality. I know that his family is very proud of him and that his many friends join me in this tribute.

Mr. President, I ask unanimous consent that the attached newspaper article which describes the lifetime achievement award Bill Mitchell received be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MITCHELL RECEIVES HONOR

(By Leonard Kransdorf)

SHEFFIELD.—In his 66 years, Bill Mitchell says he has never met someone he did not learn something from.

Tuesday, the community showed it has learned from Mitchell by giving him a Lifetime Achievement award.

"Life in this community has been a glorious experience," Mitchell said after he was presented the award at the annual Chamber of Commerce of the Shoals banquet at the Ramada Inn.

Also honored was Grady Liles, who received the Citizen of the Year Award, and last year's winner, Mary Settle Cooney. The guest speaker for the banquet was slated to have been Gov. Guy Hunt but because of bad weather conditions he had to cancel his trip to the Shoals.

Mitchell was given his award for his years of involvement in the community with such groups as the United Way and the American Red Cross and as a trustee for the University of Alabama and service since 1958 on the board of Eliza Coffee Memorial Hospital in Florence.

"He is a quiet man who does not ask for plaudits," said Dick Biddle, owner of WOWL-TV, who presented the award to Mitchell.

During his life in the Shoals, Mitchell has seen many changes, most notably the coming together of the two counties and four cities.

"That can be seen right here at this gathering," said Mitchell, retired president of the First National Bank of Florence, referring to the 1986 merger of the chambers of commerce in Lauderdale and Colbert counties.

One of the advantages to growing up in the area has been the ability to develop lifelong relationships, he said.

"I have never met a person who I did not learn something from and who did not mean something special to me," he said to the crowd at the sold-out banquet.

One of the reasons he became so involved in the community was his desire to help, Mitchell said.

"I basically just like people and feel that if an individual is going to spend time in a community he should help that community," he said before the banquet. "A lot of people have helped this area out and I am just one of them."

Also recognized at the banquet were four men who worked to bring the Lauderdale and Colbert chambers together. Cited were Dan David, Renny Breazeale, Robert Redd and Greg Lewis.

## REPORT ON THE PHILIPPINES LOCAL ELECTIONS

Mr. HELMS. Mr. President, when Corazon Aquino became the leader of the Philippines in 1986, most Americans had high hopes that her administration would bring about a restoration of peace and democracy in that troubled land. Unfortunately, as the months went by, Mrs. Aquino failed to consolidate her political base. Not only did she lose the confidence of the military leaders who were trying to fight the Communist insurgents, she also lost the support of the political leaders who had helped her to supplant the Marcos rule.

The most recent evidence of the disintegration of the political systems in the Philippines is found in the results of the recent local elections—elections which began in January. The complete tallies are still not in because of the high level of violence, and the failure to maintain the integrity of the vote-counting and certification process.

Mr. President, an American scholar, Garrett N. Scalera, was one of the few Americans to visit the Philippines for the purpose of observing the election process. Mr. Scalera spent many days there talking with officials of all parties and the U.S. Embassy. He has furnished me with a copy of his report for the use of the Foreign Relations Committee and other Senators. I commend him for his keen interest in the status of democracy in the Philippines.

Mr. President, I ask unanimous consent that this report be printed in the RECORD at the conclusion of my remarks.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

AN ANALYSIS OF THE PHILIPPINE LOCAL ELECTIONS

(By Garrett N. Scalera)

(Report to the U.S. Senate Foreign Relations Committee March 2, 1988)

Nationwide elections for 16,457 Gubernatorial, Mayoral, and town Councilor posts were held in the Philippines in 63 of the 73 provinces on January 18, 1988. Because of anticipated high levels of violence, elections in the remaining ten provinces were staggered over the next few weeks to insure adequate security (with seven towns in Mindanao still to be scheduled). Contrary to initially high expectations, however, it now appears unlikely that these elections will serve as a basis for a true "restoration" of democracy or provide a much hoped-for basis for renewed political stability. More than a month after the first returns, accusations of electoral irregularities and fraud continue to mount and election related violence continues unabated. Tragically, despite her coalition's candidates strong showing, the biggest loser appears to be the President herself.

When Corazon Aquino came to power as President in 1986 she had the overwhelming backing of the Philippine people, the political leadership, and the good will of proponents of democratic systems throughout the world. In just two years her political coalition has disintegrated and her immense popular support has begun to sharply decline.

Mrs. Aquino's problems began with her decision to proclaim a "Revolutionary" government, to renounce the constitution she had sworn to uphold, and to dismiss virtually all appointed and elected officials ranging from the members of the Supreme Court to the elected captains of every baranguy (village) in the country. Many of those who had enthusiastically supported her in the expectation of her championing a return to democracy abandoned her at this point. Nevertheless, it was not long before these political leaders—her initial supporters—rather than the leaders of the KBL party headed by former President Marcos, who banded together to form her most affective opposition as the Grand Alliance for Democracy (GAD) in the Senate and House elections in May of this year. The atmosphere which resulted in accusations of massive fraud in three elections as well as Mrs. Aquino's apparent sympathy for representatives of the extreme left and the communist party led these and other concerned citizens who had initially enthusiastically supported her to become her most vocal opponents.

At the same time a failure to deal effectively with the nation's pressing problems and a growing suspicion of a serious amount of corruption on the part of her numerous relatives in high positions and favored cronies further eroded confidence in her ability to accomplish the lofty goals she had set for her administration.

More than anything before, this election was the test for Mrs. Aquino's administration; a critical turning point in determining her commitment to the ideals of the "EDSA Revolution." Her popular support was already seriously waning during the early stages of the campaign. A highly respected polling organization supportive of her (Ateneo), for example, found that her popularity early this year had fallen from 70% to 55%. Open criticism by her Vice President, Salvador Laurel, last year led to his resignation as foreign minister in her cabinet. During the election campaign the Senate Majority leader, Jovita Salonga, head of the Liberal Party, one of the four parties within her coalition, began to criticize her relatives, accusing her family of creating a "dynasty" comparable to that of Marcos and expressly forbidden in the New Constitution.

By the time of the elections the ruling coalition had become seriously fragmented with Laurel's UNIDO party and Salonga's Liberal Party emerging more as opposition parties than as coalition members. Even the LAKAS Party, headed by her brother-in-law "Butz" Acquino and the PDP LABAN Party, headed by her brother "Peping" Cojuanco, were at odds. Mrs. Aquino's credibility was further undermined by the decision of both Butz Aquino and Peping Cojuanco to make deals with former president Marcos political cronies and reputed communists to run under their banners. Some of these people did very well indeed in the elections, including virtually across-the-board sweeps in their home provinces, but these victories understandably have fanned rumors of fraud and a return to the corrupt politics of the Marcos era.

One tragic aspect of these elections has been the high level of violence. A high level of violence has been traditionally characteristic of Philippine elections. Unfortunately these elections proved to be no exception. According to a daily tally kept by the *Globe* newspaper, 137 had died in election related violence as of January 23, 116 had been wounded, and 46 kidnapped. What distinguishes the violence in these elections from previous ones is the unprecedented number of gubernatorial and mayoral candidates among the victims—42 dead. To give a sense of perspective, one of the best campaigning points of the late Ramon Magsaysay in his successful 1953 Presidential bid, was the unacceptably high level of election related violence evidenced by the assassination of just one mayoral candidate, Lopez Padilla.

Delayed polling in 10 regions as well as delays in proclaiming winners and dealing with election complaints are prolonging the violence. In the Lanao Sur region where elections have been delayed, for example, there have been more than 100 killings are just the last few weeks. Throughout the nation violence continues unabated as delayed proclamations of results and increasing election complaints have increased tensions. Most winning candidates were not officially proclaimed until a week or more after the elections. On February 2nd, 12,000 elected officials were administered their oath of office. Nevertheless, more than 4,000 winning candidates remained unproclaimed due to unfinished canvassing, suspended proclamations, and the setting aside of proclamations, already made. By way of contrast, during previous administrations, election results could be expected within several days or at most a week after elections.

Much of the problem of election delays can be attributed to confusion and ineptness on the part of COMELEC. COMELEC—the National Commission on Elections—has sole authority for arranging and overseeing elections and proclaiming results, and for adjudication of formal complaints. Under the previous constitution, COMELEC's impartiality was perceived to be in great part due to the involvement of opposition party representatives at all stages of the election process as well as by representation on the commission itself. Most of these safeguards were abolished under the new constitution apparently in the idealistic belief that safeguards, checks and balances, need no longer be required under a government committed to honesty and implementing the will of the people. Unfortunately, this has not proved to be the case.

As election returns began to come in COMELEC began to be delayed with formal complaints of election fraud and irregularities. Many of these were leveled against COMELEC officials themselves and a substantial number of these have already been substantiated. These problems were dramatically compounded when the terms of office of COMELECs ruling board of commissioners were allowed to expire on February 2, leaving no authority to deal with over 600 formal complaints already filed or other problems such as COMELEC's decision on January 28 that 128 proclaimed winners in 26 areas across the nation were in fact invalid. Incredibly, only as of now, one month later, has a full new commission been reconstituted.

As might be expected the major perpetrators of violence are thought to be the communist and this appears to be so. But they are by no means the only culprits. As overall violence throughout the nation, far exceeding the election related violence, has mounted, prominent private citizens have sought to defend their families and interests by forming private "armies" or vigilante groups. Additionally, the long quiescent Moro National Liberation Front has made a stunning comeback over the last year and thousands of individual peasants have felt compelled to arm themselves. Although it is still too early to make a detailed analysis, this election might will come to be seen as a turning point to a return to the pre-martial law era of fuedal-like warlords or political barons; an ominous trend which if it continues could well lead to a general disintegration of law and order and ultimately civil war.

## SOVIET ARMENIA

Mr. PRESSLER. Mr. President, I have closely followed recent events in the Armenian Soviet Socialist Republic. What is occurring there, and the eventual official Soviet Government response to it, will tell us much about the future direction of Soviet nationalities policies. This is a subject which always has created problems for those who wield power in the Kremlin. It will continue to be the source of centrifugal forces in the Soviet political system.

Mr. President, in case some may not have had the opportunity to see the excellent series of articles on the Armenian question published in the New York Times, I ask unanimous consent that they be printed in the RECORD at the close of my remarks. We depend on outstanding reporters such as Philip Taubman and Felicity Barringer to let us know what is happening at this critical time in the Soviet Union.

So long as the Armenian national spirit is kept alive, as it surely will be, we will see Armenians struggling in the Soviet Union for stronger rights to develop and preserve their culture and unique identity. I am confident that all Americans wish them well in their heroic efforts.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 24, 1988]

### SOVIET SAYS ARMENIAN UNREST BROKE OUT IN SOUTHERN AREA

(By Philip Taubman)

Moscow, February 23.—The Soviet Union today reported major Armenian nationalist disturbances in an ethnically volatile area in the southern part of the country.

The actions, including a rare show of defiance against Soviet policy by local government officials, appeared to be the most serious outbreak of nationalist protests since two days of anti-Soviet rioting shook the central Asian city of Alma-Ata in December.

The press agency Tass said there had been a "breaching of public order" in the Nagorno-Karabakh Autonomous Region, a remote mountainous area within the Azerbaijan Republic near the border with Iran.

#### NATIONALIST PROTESTS ARE BUILDING

Tass said part of the Armenian population, the predominant ethnic group, was demanding that the territory be attached to the neighboring Armenian Republic. The region has long been a source of dispute between the two republics.

The protests are the latest in nationalist demonstrations around the Soviet Union that have alarmed party leaders in Moscow.

The protests apparently led Mikhail S. Gorbachev, the Soviet leader, to call last week for a Central Committee meeting devoted to nationalities policy, which he described as "the most fundamental, vital issue of our society."

The Government newspaper Izvestia said the Armenian protests began 10 days ago and included public rallies and school boycotts. It said they had spread to the Armenian capital, Yerevan, where a "noisy" demonstration demanded the transfer of Nagorno-Karabakh to Armenia.

Unofficial accounts reaching Moscow said that large demonstrations were held in Yerevan the last four days and that the local party leader, Karen S. Demirchyan, had appealed for calm on television Monday evening.

In an indication of Moscow's concern, Izvestia said two nonvoting members of the Politburo, Pyotr N. Demichev and Georgi P. Razumovsky, had been sent to Stepanakert, capital of Nagorno-Karabakh. There were unconfirmed reports that Vladimir I. Dolgikh, a nonvoting member of the Politburo, and Anatoly I. Lukyanov, a Central Committee secretary, had been sent to Yerevan.

DEMANDS ARE REJECTED

Tass said the Central Committee had rejected demands for uniting Nagorno-Karabakh with Armenia and had called for maintaining order. Soviet officials said the decisions were made last week in a full meeting of the committee.

Izvestia reported that a group of members of the Nagorno-Karabakh Soviet, the region's legislature, approved a resolution Saturday calling for high-level consideration of the transfer of the region to Armenia.

Several factors apparently prevent the unification of Nagorno-Karabakh with Armenia, including Azerbaijani objections and a reluctance by the authorities in Moscow to adjust internal political boundaries. Giving in to nationalist pressure would also be considered a dangerous precedent.

The Soviet Union is composed of more than 100 ethnic groups that were united under Soviet control in the 1920's, in some cases by force. Many remain hostile to Moscow and, encouraged by Mr. Gorbachev's calls for increased openness and democracy, have agitated for greater autonomy.

Armenians, along with Jews and ethnic Germans, have sought to emigrate to the West in greater numbers than other Soviet national groups. More than 1,000 Armenians a month have been receiving permission to emigrate since late last year. Many have moved to the Los Angeles area, where there is a large Armenian population.

Russians make up 51.5 percent of the Soviet population, but Soviet experts expect Russians will be a 49 percent minority by 2000.

The force of nationalism is viewed by some Western analysts as the most serious long-term threat to the integrity of the Soviet state.

The Government has reported incidents of nationalist protest during the last 18 months in the Baltic cities of Vilnius, Riga and Tallinn as well as the central Asian cities of Alma-Ata and Tselinograd and the Siberian area of Yakutia.

The Government today temporarily closed a Baltic republic, Estonia, to foreign diplomats and journalists. Estonian nationalist groups have called for demonstrations in the republic Wednesday to mark the 70th anniversary of Estonia independence day. The republic was independent for 20 years between the World Wars. Estonia and its sister republics, Lithuania and Latvia, were annexed in 1940.

The disturbances in Nagorno-Karabakh began Feb. 11 when leaflets started appearing around the region calling for unification with Armenia, Izvestia said.

The region is an area of arid mountains that is known for the longevity of many residents and the production of sheep, pigs, grapes and tobacco. It is composed of 126,000 Armenians, who are predominantly Christian, and 37,000 Azerbaijanis, who are Moslem.

Although the vote of the local Soviet on Saturday favoring a review of Nagorno-Karabakh's status was declared invalid because of unspecified procedural violations, a text of the resolution was printed in Russian and Armenian in the region's main newspaper, Soviet Karabakh, according to Izvestia.

Izvestia reported that Mr. Razumovsky, who is also a Central Committee secretary, said at a meeting of the local party organization in Stepanakert on Monday evening that any attempt to break Nagorno-Karabakh away from Azerbaijan was unacceptable.

The local party organization adopted a resolution that conformed with his statement, Izvestia said. Tass said the demands for secession "contradict the interests of the working people in Soviet Azerbaijan and Armenia and damages interethnic relations."

---

[From the New York Times, Feb. 25, 1988]

SOVIET TRYING TO QUELL ETHNIC UNREST

(By Philip Taubman)

Moscow, February 24.—The authorities in two southern Soviet republics moved today to quell Armenian nationalist protests that appeared to be developing into a major problem for Mikhail S. Gorbachev and the Communist Party.

Reports by the press agency Tass indicated that disturbances were continuing in the Armenian and Azerbaijani republics and that local government and party agencies were having difficulty restoring order.

Tass said party officials in the two republics held a series of meetings today to consider "urgent measures to normalize the situation."

The substance and tone of the government reports suggested that the problems constituted the most serious officially confirmed case of nationalist unrest in the Soviet Union in many years.

REGIONAL PARTY LEADER DISMISSED

The demonstrations center on demands that the Nagorno-Karabakh Autonomous Region, a predominantly Armenian area within Azerbaijan, be attached to Armenia. Most Armenians are Christian, most Azerbaijanis Moslem. The issue has provoked disturbance for several days in both Nagorno-Karabakh and Armenia.

Tass said today that the autonomous region's party leader, Boris S. Kevorkov, believed to be either a Russian or an Azerbaijani, was dismissed today and replaced by Genrikh Pogosyan, an Armenian.

A British tourist reached by telephone in Yerevan, the capital of Soviet Armenia, said late today that "large crowds" were visible throughout the city during the day.

The Briton, who said his tour group arrived in Yerevan this morning from the Azerbaijani capital of Baku, said tens of thousands of people, divided into groups, paraded through the city during the day. He said that the mood of the demonstrators seemed "cheerful" and that he saw no evidence of violence or confrontations with the police and no signs of a rumored general strike.

Unofficial reports from Yerevan had said that more than 100,000 people gathered in a downtown square each of the last three days to petition the authorities to transfer political control of Nagorno-Karabakh to Armenia.

PAUCITY OF INFORMATION

The tourist said the authorities in Yerevan had made no effort to limit sightseeing by his group. By evening most of the demonstrations had dissolved, he reported.

His account was one of the few descriptions of the unrest that did not come from the Government, which has provided no information about the number of demonstrators, or from dissidents, who often exaggerate such figures.

A Foreign Ministry spokesman, Gennadi I. Gerasimov, said in Moscow today that he had been told by a senior Armenian official that the protests in Yerevan "were of a peaceful nature." But he declined to provide any other information that had not already been reported by Tass or published in Izvestia, the Government daily.

Western correspondents, who must notify the Government about travel plans several days before departure, cannot visit the troubled areas until the weekend at the earliest. Government officials reached by telephone in Yerevan refused to comment, and direct dialing of calls to Armenia, usually routine from Moscow, was not possible in most cases today. Calls were intercepted by operators and placed after a delay of several hours, if at all.

A number of nationalist protests around the country in the last 18 months have alarmed Mr. Gorbachev and the party leadership, raising concerns that increased agitation by many of the country's more than 100 ethnic groups could pose a threat to the cohesion of the Soviet state.

One Tass report said party leaders in Nagorno-Karabakh concluded at a meeting today in the regional capital of Stepanakert that "unless responsible measures are taken now," the actions and demands "might lead to unpredictable consequences and even to consequences difficult to remedy."

The statement suggested to Western diplomats a concern on the part of local political leaders that if the unrest does not abate, some form of martial law might be imposed by Moscow.

The autonomous region is home to 126,000 Armenians and 37,000 Azerbaijanis. Several factors apparently prevent the unification of the autonomous region with Armenia, including Azerbaijani objections and a reluctance by Moscow to alter internal political boundries. Acceding to nationalist pressure would also be considered a dangerous precedent.

AN ECHO IN ESTONIA

Far to the north, in the Baltic republic of Estonia, there was a peaceful nationalist demonstration today, according to Urmas Reitelmann, an Estonia television reporter.

Mr. Reitelmann said in a telephone interview that a gathering of about 4,000 Estonians took place this evening in Tallinn, the capital, to mark the 70th anniversary of the beginning of the republic's brief period of independence between the world wars.

Estonia, along with two other Baltic republics, Latvia and Lithuania, was annexed by the Soviet Union in 1940, and nationalist sentiment is strong in all three.

Mr. Reitelmann said the authorities made no effort to break up the rally, which lasted two hours.

---

[From the New York Times, Feb. 26, 1988]

NEWS CUT OFF AS ARMENIAN PROTESTS CONTINUE

(By Philip Taubman)

Moscow, February 25.—Armenian nationalist protests continued today in two southern Soviet republics as the authorities in Moscow moved to limit the flow of information from the area.

Almost all telephone connections from Moscow to the affected areas in the Armenian and Azerbaijani republics were cut off, and the Government temporarily banned travel to the region by foreign reporters.

The press agency Tass, which had provided a modicum of information about the protests earlier in the week, made almost none available today.

The demonstrations appear to be the most serious case of nationalist unrest in the Soviet Union in many years.

A CIRCUITOUS NETWORK

Most new information about the disturbances to reach the capital today came from dissidents who said they had received news through a circuitous network of phone calls from Moscow through other cities to Yerevan, the Armenian capital.

The dissidents, who are not always reliable sources of information, said the large demonstrations continued to disrupt Yerevan today.

The demonstrations center on demands that the Nagorno Karabakh autonomous region, a predominantly Armenian area within Azerbaijan, be attached to Armenia. Most Armenians are Christian, most Azerbaijanis are Moslem.

The Feb. 23 edition of Kommunist, the main newspaper in Yerevan, reached Moscow today. It contained the text of a televised speech Monday evening, in which the party leader of Armenia, Karen S. Demirchyan, appealed for the restoration of order.

RALLIES AT OPERA HOUSE

Noting that there had been rallies in front of the Yerevan opera house for several days, Mr. Demirchyan called the situation "serious."

Also reaching Moscow today was a document that appeared to be a copy of a resolution approved by members of Nagorno Karabakh's nominal legislature last week calling for the unification of the region with Armenia.

The resolution, which was approved Saturday by a vote of 110 to 7, with 13 abstentions, was renewed Wednesday, according to one Muscovite who said he was in touch with residents of Stepanakert, the capital of Nagorno Karabakh.

It is rare in the centralized Soviet system for Government officials to defy policies set in Moscow. Last week the Communist Party Central Committee rejected demands that Nagorno Karabakh be incorporated into Armenia.

Tass reported that the Deputy Procurator General of the Soviet Union, one of the country's top law enforcement officers, was in Stepanakert to investigate reports that Armenians were being harassed by the authorities.

The report cited one rumor of an attack by militiamen on a car owned by a resident of Stepanakert and a report that 60 Armenians had been murdered.

Tass reported that the official, Aleksandr Katusev, had found these, and most other accusations, groundless.

Mr. Katusev, according to Tass, said, "At present, explanatory work is being conducted among the population in the autonomous region with the aim of normalizing the situation and asserting a businesslike atmosphere."

"I will not conceal that there have been offenses punishable by criminal law," he said.

---

[From the New York Times, Feb. 28, 1988]

ARMENIAN PROTESTS REPORTEDLY SUBSIDE

(By Felicity Barringer)

Moscow, Feb. 28.—The streets of Yerevan were quiet today for the first time in more than a week, as organizers of huge nationalist demonstrations that had paralyzed the Armenian capital met to discuss a planned month-long suspension of the protests, Armenian nationalists said.

Smaller demonstrations continued, however, in the Nagorno-Karabakh Autonomous Region, the predominantly Armenian area within the Azerbaijan republic, according to reports reaching Western reporters in Moscow. The demand that the region be incorporated into the neighboring Armenian republic has been the focus of the protests.

In Yerevan, according to Armenians there who were reached by telephone, some nationalists were challenging the protest leaders, saying that the leaders had given an unduly optimistic assessment of Soviet leader Mikhail S. Gorbachev's desire to accommodate Armenian demands.

ASSURANCES FROM GORBACHEV

After receiving assurances from Mr. Gorbachev that he would personally study their demands, the protest leaders on Saturday had argued in favor of the suspension of protest before about 100,000 demonstrators gathered in Yerevan, who then appeared to give their approval of the proposal with a show of hands, according to Armenians there.

While Mr. Gorbachev's call for a return of order was being read over Armenian and Azerbaijani televison Friday, the Soviet leader was meeting with two leading Armenian writers, Zori Balayan and Silva Kaputikyan, who said later in interviews that Mr. Gorbachev had given the assurances during the meeting.

The Armenian protesters are following the lead of the Nagorno-Karabakh governing council in demanding that it be united with Armenia. The disturbances sparked by the Communist Party Central Committee's rejection of the request appear to be among the most serious incidents of nationalist unrest in Soviet history.

A Soviet prosecutor today confirmed the deaths of two Azerbaijani residents of Nagorno-Karabakh in the early days of the protests. In a Soviet radio broadcast monitored by the British Broadcasting Corporation, the prosecutor, Aleksandr Katusev, said that the deaths had occurred in the Agdamsky district of Azerbaijan. It was the first official confirmation of fatalities, which a nationalist leader had reported Saturday.

A videotape said to be taken of protests in Yerevan has been brought to Moscow by Sergei I. Grigoryants, a dissident journalist who said he spent 24 hours in the Armenian capital last week. He turned the tape over to the ABC News Moscow bureau, which played it for reporters here today.

The videotape, which appeared to be authentic, offered evidence that last week's peaceful protests, which drew hundreds of thousands of Armenians, had caught the imagination of the Armenian people and rendered the Communist government temporarily irrelevant.

The videotape was said to be taken last Thursday and Friday, and offered confirmation of accounts that hundreds of thousands of people gathered in front of Yerevan's opera house singing nationalist songs, chanting and thrusting their hands in the air.

The Armenian protests were "perhaps the most significant democratic event in the Soviet Union in the past 70 years," said Mr. Grigoryants.

According to other reports from Yerevan, thousands of Armenians continued to stream into the capital "from all corners of the republic," as one Armenian put it.

Although the demonstrations did not seem particularly anti-Soviet, the image of a city in the Soviet Union temporarily out of the control of the authorities illustrated the potential dangers posed by nationalist forces that are pulling against the cohesion of the Soviet state.

For anyone accustomed to the order and calm of Soviet cities, where even a handful of demonstrators are usually quickly dispersed by the police, the scenes shown in Yerevan on the tape seemed extraordinary.

Thousands of protesters streamed through the streets. Normal traffic and business seemed to have come to a halt. The central opera house square filled with protesters, many of whom carried banners and flags. Some banners said, "Karabakh is a test of perestroika," a reference to Mr. Gorbachev's policy of restructuring the economy and expanding political freedoms. Another said, "Self-determination is not extremism."

NO-DRINKING ORDER

The organizers, who formed a committee representing various regions and various enterprises in Yerevan, also were said to have maintained discipline, including a no-drinking order that lasted throughout the week.

Armenians reported last week that a large contingent of Soviet troops was in the area but they did not interfere with the demonstrations.

The Communist Party leadership has traditionally made public order a cardinal value, and has been quick to contain nationalist political expressions. Last year some demonstrations by Crimean Tatars and nationalists from the Baltic republics were permitted, but more recently such activities have been suppressed.

Events reported in Yerevan Sunday indicated that the authorities were moving to gain control over the group leading the demonstrations.

The organizing group formed during the protests met Sunday and reconstituted itself with a new membership, excluding all but one member of the original group, according to an Armenian nationalist, Paruir Airikyan. Among those excluded was the most visible leader from Nagorno-Karabakh, theater director Vache Sarukhanyan.

"The people took this not as an anti-Soviet or anti-Russian movement, but a struggle with the bureaucratic elements of the party," said Igor Muradyan, an economist originally from Nagorno-Karabakh.

TV WORKERS' REPORTED THREAT

"We never had any idea it would get this big," added Mr. Muradyan, who is a member of the organizing committee.

One sign of the unexpected support in official quarters, according to Mr. Grigoryants and Rafael Popoyan, a Yerevan resident, was an announcement at one mass meeting that workers in the republic's television studios had threatened to cease all broadcasting if they could not show the demonstrations.

---

[From the New York Times, Mar. 1, 1988]

SOVIET REPORTS A MAJOR OIL CENTER IN AZERBAIJAN IS SHAKEN BY RIOTS

(By Philip Taubman)

Moscow, February 29.—The Soviet Union reported today that one of its key oil and natural gas centers was shaken Sunday by an outbreak of rioting apparently related to recent nationalist unrest in the same region.

The press agency Tass said the industrial city of Sumgait, on the Caspian Sea, was the scene of the rampage. The city is in the Azerbaijan Republic, which along with the neighboring Armenian Republic, has been shaken by nationalist protests and clashes in the last two weeks.

The eruption of voilence is Sumgait, about 20 miles from the Azerbaijani capital of Baku, suggested that the temporary suspension of massive protests in the Armenian capital of Yerevan over the weekend did not mean a quick end to one of the most serious cases of nationalist unrest in the Soviet Union since the 1920's.

CHRISTIANS AND MOSLEMS

Unofficial information reaching Moscow indicated that the rioting in Sumgait, a city of 220,000, involved fighting between Azerbaijanis and Armenians.

Clashes between the two groups in recent weeks in other parts of Azerbaijan left two Azerbaijanis dead and several dozen Armenians and Azerbaijanis injured, according to Government reports.

The two groups are divided by religion—the Armenians primarily Christian, the Azerbaijanis primarily Shiite Moslem—and by a history of conflict predating the formation of the Soviet Union.

PROTESTS IN NAGORNO-KARABAKH

The report about Sumgait came as protests reportedly continued in the Nagorno-Karabakh Autonomous Region, a largely Armenian area within Azerbaijan.

The recent wave of nationalist unrest began with, and has centered around the revival of longstanding demands that the region be unified with Armenia. Sumgait is about 150 miles northeast of Nagorno-Karabakh.

Residents and government officials in Stepanakert, the capital of Nagorno-Karabakh, said in telephone interviews today that Armenian demonstrators were again marching through the city.

DEMONSTRATIONS BEGAN FEBRUARY 13

Demonstrations began in Nagorno-Karabakh on Feb. 13, then spread to Yerevan a week later, where hundreds of thousands of Armenians boycotted schools and jobs, pouring into the center of the capital for the largest nationalist demonstrations witnessed in the Soviet Union in decades.

Yerevan was quiet again today, as life and work returned to normal after Mikhail S. Gorbachev's personal intervention Friday.

After Mr. Gorbachev called for restoring order Friday, and told two leading Armenian writers that he would review the grievances that touched off the protests, Armenian nationalist leaders appealed Saturday for a one month suspension of the demonstrations in Yerevan.

Tass, following the Government's policy of disclosing only the sketchiest reports about the unrest, said the disturbances in Sumgait were provoked by "a group of hooligans."

"Rampage and violence followed," Tass reported.

The press agency added: "Measures have been adopted to normalize the situation in the city and safeguard discipline and public order. An investigation has been launched."

BACKGROUND TO THE CONFLICT

The Azerbaijani Republic, like Armenia, lies in a centuries-old border area between the Christian world of European Russia to the northwest and the Moslem world of Turkey and Iran to the southwest and southeast.

Within the Moslem world, the Azerbaijanis are part of the Shiite Moslem sect that holds sway in the Iran of the Ayatollah Ruhollah Khomeini. Soviet officials have long been concerned about the spread of Islamic fundamentalism to the religious and ethnic cousins of the Iranian Azerbaijanis.

Among other things, the 5 million or more Soviet Azerbaijanis—the figure is from the 1979 Soviet census—share a common history and language with their 5 million ethnic cousins in Iran.

But Moscow's worries now focus on the Christian-Islamic disputes that have rent the southern Caucasus for more than 150 years.

Not only is the predominantly Armenian region of Nagorno-Karabakh wholly separated from Armenia by the boundaries drawn in the 1920's, but the largely Azerbaijani Nakhichevan Autonomous Republic is separated by Armenia from the rest of Azerbaijan, though it is governed from Baku.

These two territories reverted to Azerbaijani control in 1923 as part of a Soviet effort to accommodate the wishes of Moslem Turkey, whose help it sought in subduing the ethnically Moslem areas of Central Asia.

Few, if any, issues raise greater concern in Moscow than nationalist agitation because it cuts to the stability of the state.

The Soviet Union is a nation of more than 100 ethnic groups uneasily united under the Communist banner and governed by members of a Russian majority that is likely to become a minority by the turn of the century if current demographic trends continue.

Soviet officials like to talk about their society as one of the multinational harmony, where Soviet patriotism and allegiance to Communism override regional and cultural interests.

But in reality many ethnic groups—including Lithuanians, Latvians and Estonians, as well as nationalists in the Kazakh city of Alma-Ata who rioted in December 1986—have maintained a distinct national character and pride, and chafe at Soviet rule, which in many cases was imposed by force as first Russia, and later the Soviet Union, extended its boundaries.

The suspension of the latest round of demonstrations did not end the problem for Mr. Gorbachev.

For one thing, he may be held accountable by other party leaders for creating a permissive climate that helped produce the Armenian and other nationalist protests.

Mr. Gorbachev has said repeatedly in recent months that his policies were coming under criticism for eroding discipline and increasing the chances of disorder. He strenuously rejected these assertions.

A number of banners carried by protesters in Yerevan underlined the possible link between the nationalist unrest and Mr. Gorbachev's policies.

"Karabakh is a test of Perestroika," one banner said, referring to Mr. Gorbachev's policy of restructuring the economy and liberalizing the Soviet system. Another said, "Self-determination is not extremism."

---

[From the New York Times, Mar. 3, 1988]

SOVIET REPORTS DEATHS IN RIOTING; UNOFFICIAL TOLL IN AZERBAIJAN IS 17

(By Philip Taubman)

Moscow, March 2.—A Soviet spokesman said today that an unspecified number of people were killed in nationalist rioting Sunday in the southern Soviet city of Sumgait.

The spokesman, Gennadi I. Gerasimov, declined to give a precise number but indicated that the total was close to an unofficial figure of 17 deaths reported in Moscow by a journalist who is also a dissident.

"That number may be slightly exaggerated, there were no more than that," Mr. Gerasimov said in a brief telephone interview.

Mr. Gerasimov's confirmation that people were killed in the rioting, like his report Tuesday that troops had been sent into Sumgait to quell the unrest, represented a degree of candor about a sensitive subject that is rare even in the more open atmosphere encouraged by Mikhail S. Gorbachev.

NOT DUPLICATED IN PRESS

The Candor, however, has not been duplicated by the Soviet press and television, which have yet to inform the Soviet people about the deaths or the presence of troops in Sumgait.

The journalist, Sergei Grigoryants, who has generally proved to be a reliable source of information about the nationalist unrest, said he was told 17 people died, and dozens injured, in clashes in Sumgait on Sunday between Azerbaijanis and Armenians.

Sumgait, an industrial center on the Caspian Sea, is in the Azerbaijan republic, which along with the neighboring Armenian republic had been shaken by nationalist protests and clashes in the last two weeks.

The disturbances have been among the most serious outbreaks of nationalist unrest since consolidation of the Soviet Union in the early 1920's.

HUNDREDS FLED HOMES

Government officials is Baku, the Azerbaijan capital, said today that hundreds of Azerbaijanis fled from their homes in Armenia during the disturbances last week and now needed assistance.

The officials, reached by telephone from Moscow, said a Government commission had been formed to help the refugees return to their homes in Armenia.

About 160,000 Azerbaijanis live in Armenia, a republic with a population of 3.1 milion.

Azerbaijan has a population of 6.3 million, including about 475,000 Armenians.

TRAIN REPORTED DAMAGED

Mr. Grigoryants reported that violence flared across the two republics last week, and said one passenger train traveling from Baku to Yerevan, the Armenian capital, was badly damaged by vandals as it made the journey.

Last week the Government confirmed that two people were killed and several

dozen hurt during nationalist unrest in the two republics.

The Government reported Tuesday that military forces were called in Sunday to quell the rioting in Sumgait and had remained there to enforce a nightime curfew.

Mr. Gerasimov said today that troops were still patrolling the city and that, as far as he knew, the curfew was still in effect between 8 P.M. and 7 A.M.

ARMENIANS SEEK DISTRICT

The recent wave of nationalist unrest has centered on longstanding demands that a predominantly Armenian district within Azerbaijan, the Nagorno-Karabakh Autonomous Region, be attached to Armenia.

The two nationalities are divided by religion—the Armenians are primarily Christian, the Azerbaijanis primarily Shiite Moslem—and by a history of conflict predating formation of the Soviet Union.

Telephone links from Moscow to Nagorno-Karabakh were not operating again Wednesday, preventing Western reporters in Moscow from talking to Government officials in the region who had provided information about the protests in recent days.

The Government has not allowed Western reporters to travel to Armenia and Azerbaijan. Mr. Gerasimov said Tuesday that the ban was imposed "because the presence of foreign reporters could only excite extremist elements."

The demonstrations began Feb. 13 in Stepanakert, then spread a week later to the Yerevan, where hundreds of thousands of Armenians gathered daily downtown.

Yerevan was reportedly quiet again today. The demonstrations there dissipated Saturday after Armenian nationalist leaders proposed a one-month suspension of the protests to allow party leaders in Moscow to review their grievances.

Although the unrest has apparently preoccupied the party leadership in recent days, the Soviet people have received only a smattering of information about the developments.

## THE NOMINATION OF WILLIAM L. BALL III

Mr. DECONCINI. Mr. President, I would like to take just a few minutes to compliment President Reagan for his wise and prudent decision to nominate William L. Ball III as Secretary of the Navy. Mr. Ball has served as a commissioned officer in the U.S. Navy aboard a missile destroyer, the U.S.S. *Sellers*. He also worked for 3 years for the Navy Department in Washington. He has extensive experience with this branch of the armed services in his work on the Hill, and subsequently, in his role in the executive branch.

Mr. Ball faces some difficult decisions in his new appointment, should the Senate decide to confirm him. The Navy has assumed its fair share of cuts conveyed in the President's budget request, having taken approximately $12 billion in reductions. Many arduous decisions remain in the next few months as Congress marks up the defense bill in each respective committee. Additionally, should the INF Treaty pass with the necessary 67 votes in the Senate, more decisions will have to be made on our conventional weaponry and force structure.

I believe there are difficult and trying times ahead for the next Secretary of the Navy. Mr. Ball is highly regarded and respected on Capitol Hill and would be able to make these decisions with the Navy and the Defense Department's best interests in mind. He worked up here on the Hill for Senator Tower and Senator Talmadge, before joining the executive branch. He has an excellent relationship with both sides of the aisle. He will have bipartisan support from the Hill on his confirmation. I believe he has represented the President well in his role with the administration and I look forward to working with him at the Navy Department. I will strongly support the President's nomination of Mr. William Ball as the new Secretary of the Navy.

## MR. JUSTICE POWELL

Mr. WARNER. Mr. President, it has been over 8 months since Justice Lewis F. Powell, Jr. retired on June 26, 1987, after 16 years on the U.S. Supreme Court.

It is my distinct pleasure, now that the Supreme Court has been restored to its full complement of Justices, to focus the attention of the Senate on the contributions to our Nation by Justice Lewis F. Powell, Jr.

In preparing these remarks I would like to extend my appreciation to Mr. Cabell Chinnis, an attorney with Latham and Watkins, Washington, DC, who served as a clerk to Justice Powell from June 1985 until July 1986. I would also like to extend my appreciation to Miss Sally Smith, who came to the U.S. Supreme Court with Justice Powell in 1972 and has faithfully rendered her expert services to the Justice for so many years.

The remarks follow:

REMARKS BY SENATOR JOHN WARNER ON THE RETIREMENT OF JUSTICE LEWIS F. POWELL, JR.

Lewis F. Powell, who served as an Associate Justice on the United States Supreme Court, epitomized Virginia's long tradition of public service. Throughout his career, he has made enormous contributions to the Nation reflecting tribute on his beloved state of Virginia. Now that he has retired as an active Justice, it is timely to reflect on the career and character of this remarkable citizen.

Justice Powell was born in Suffolk, Virginia, in 1907. He received both his undergraduate and LL.B. degrees from Washington and Lee University (W&L). It was my privilege and that of my father to attend this same university. Throughout his work at W&L, he showed the mental acumen and leadership that was to distinguish his later work. He was graduated magna cum laude and elected to Phi Beta Kappa. His peers elevated him to President of Student Government at W&L.

In 1936, he was joined in life by his wife Josephine Rucker who faithfully and lovingly was a partner in his distinguished career.

Justice Powell's devotion to public service is intense. He interrupted a flourishing private practice in Richmond to volunteer for active military duty and served as Chief of Operational Intelligence for U.S. Strategic Air Forces in Europe in World War II. For his exemplary work there, notably with the "Ultra Code" that was of critical importance to the Allied war effort, Justice Powell received the Legion of Merit and Bronze Star and the Croix de Guerre with Palm from France.

Justice Powell's contributions to public service continued throughout his private law career. He was an active leader in the American Bar Association, and was its President from 1964 to 1965. He served on the National Advisory Committee on legal services to the poor from 1964 to 1965, and President of the American College of Trial Lawyers from 1969 to 1970. He served also on two Presidential Commissions—President Johnson's National Commission on Law Enforcement and Administration of Justice and President Nixon's Blue Ribbon Defense Panel within the Department of Defense.

Justice Powell also made equally great contributions within Virginia. He served on the Virginia School Board from 1961 to 1969 (and was its President from 1968 to 1969) and the Richmond Public School Board from 1952 to 1961. In both positions he quietly and effectively carried the heavy and then-controversial burden of implementing the mandate of *Brown* v. *Board of Education of Topeka*. He also currently acts as Trustee to both the Colonial Williamsburg Foundation and Washington and Lee University.

In 1971 President Nixon appointed Lewis Powell as an Associate Justice of the Supreme Court. As a jurist, he began service on January 7, 1972. He brought to that most trusted and respected position in this country the commitment to public service that had been a hallmark of his past work.

"A lawyer's lawyer and a judge's judge," as he has been aptly praised many times, Justice Powell always studied with meticulous care both the applicable law and the facts of the case. His opinions reflect this approach: They are remarkable for the clear presentation of the facts of each case and the careful formulation of the issues presented. What is most impressive about the opinions, however, is the guidance and direction they provide. Justice Powell took care to provide realistic and effective guidelines for litigants and judges in future cases, whether in examining official immunity, Due Process, discrimination in juries, or any number of other difficult Constitutional areas. Members of both the bar and the bench have said that an opinion by Justice Powell is an assurance that they will have workable, flexible guidance in adjudicating their own, later cases.

What is most striking for me about Justice Powell's judicial career, however, with its opinions and dissents too numerous to detail here, is the image of Justice Powell himself, a man of unquestioned intellectual and moral integrity. Whatever may be history's ultimate verdict on his judicial opinions and dissents, there is no doubt that Justice Powell brought to his work not only a powerful mind but also a character of "dispositions that are lovely in private life."

Other tributes to Justice Powell have uniformly spoken of his "integrity." With Justice Powell, these went far beyond the simple insulation of personal affairs from

judicial office. It extended to an intellectual and judicial integrity that caused him to approach each issue before the Court with a meticulous attention to the case itself, an openness to argument, an oft-noted freedom from idealogical biases, a dedication to the Constitution, and a commitment to the role of the Court as the protector of "a system of ordered liberties" essentials to a free people.

Another frequently encountered note in examining Justice Powell's career is his modesty accompanied by a soft spoken, but firm, demeanor. Although Justice Powell was justifiably proud of what he had done, his pride was always expressed with a sense that "self-limitation is the mark of a master." HIs unassuming, and gracious manner bespeaks such modesty in his personal life as well as his professional, this unwillingness to fashion sweeping principles that run far beyond the facts of the case or to impose his individual value judgments on other branches of Government and the fifty States manifest will be among the hallmarks of his judicial legacy.

Finally, Justice Powell's life and career have been marked by the quality of his unfailing courtesy. As anyone who has met him can attest, this courtesy goes beyond simple good manners, and extends to a genuine interest in and respect for the people around him. HIs questions to counsel from the Bench, although not always gentle or easy, never bullied. His care and concern for the law clerks and staff who worked for him were renowned at the Court, whether it was sending flowers, or anonymously arranging for babysitting for a clerk's beleaguered spouse. His quiet manner and his unfeigned interest in others puts visitors immediately at ease. Justice Powell is quintessentially "the courtly Virginia gentleman."

No tribute to Justice Powell would be complete without a mention of his wife, Jo. Her gaiety, wit, and charm make her delightful company, and her generous heart makes her a valued friend. During their 52 years of marriage, Jo has helped raise four wonderful and devoted children, and has uncomplainingly made the many sacrifices demanded in public service, including moving from her beloved Richmond when Justice Powell was appointed.

The words written in tribute to the late Justice John Marshall Harlan are particularly appropriate here in closing these remarks on Justice Powell:

"The man and the judge were one: a gentleness that pervaded all he said and wrote; a respect for others that made him always ready to listen and to reconsider; a love for his country and for his fellow-man that gave him an unshakable faith in our ability not just to survive but to grow stronger in the process."

We will miss Justice Powell's presence in the Court. I take consolation, however, that he has assumed duties as an "active retired Justice." His public-minded and giving spirit will, I am sure, move him to further work with the Courts. The Federal Bar and the Nation will benefit from the further contributions of this wise and wonderful gentleman.

To paraphrase a line which Virginia's beloved son Thomas Jefferson might have uttered were he here today to comment Justice Powell: "God grant that men of principle will always be our principal men."

## CONVENTIONAL ARMS BALANCE IN EUROPE

Mr. WIRTH. Mr. President, I want to continue this afternoon to share with my colleagues various analyses of the conventional arms balance in Europe. Today I would summarize and include in the RECORD the analysis "Conventional Shrinksmanship" from the November 28, 1987 edition of the Economist.

A most cogent analysis of the strategic imperatives and opportunities facing the alliance in future conventional force reduction talks is presented in the November 28, 1987 issue of the Economist. The switch from the mutual and balanced force reduction talks, which dealt with forces in Poland, Czechoslovakia, the two Germanies and the Benelux countries, to new efforts covering all forces from the Atlantic to the Urals, holds both promise and danger.

Forging a common bargaining position for the diverse Western contingent ranging from Spain to Turkey will pose a great and continuous challenge in the face of a monolithic East block approach. Security, and not economics, the Economist warns, must dictate the course of arms control negotiations. Thus, the West should not be too eager to embrace Mikhail Gorbachev's call for 25 percent conventional force reductions from current levels. Once NATO has made big cuts, it will be politically and logistically all but impossible to restore them in time of crisis. The 6-percent cuts envisaged in MBFR are a much better starting point for the West, and can be increased at a later date if the agreement works properly. Moreover, the West should have no problem taking up the East's call for including heavy equipment in the reduction talks. Equipment is not only easier to count, but NATO has fewer tanks per soldier than the Warsaw pact, and so has more to gain in balancing the number of tanks and guns.

The Economist believes, however, that Soviet calls to include battlefield nuclear weapons in the talks should be resisted, as history, it claims, has proven that nuclear weapons backed by strong conventional forces prevent war, while conventional ones alone decidedly do not. The West should also be cautious of equating United States troops and forces withdrawn to American shores with Soviet forces more easily reintroduced to the Atlantic-to-Urals theater. Nor should the West settle for anything less than verifiable pact force levels. Nevertheless, the conventional force talks, properly approached, offer the West the opportunity to reduce forces selectively while maintaining an adquate conventional deterrence.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

### CONVENTIONAL SHRINKSMANSHIP

The conventional forces of NATO and the Warsaw pact gobble up money and manpower. It is in reducing them, much more than in scrapping arsenals of missiles, that America could trim its budget deficit and Russia find the resources it so badly needs to improve the lot of its people.

All efforts to reduce them have so far failed. The MBFR (mutual and balanced force reduction) talks between the two blocks started in 1973 with a remit to cut forces in Poland, Czechoslovakia, the two Germanies and the Benelux countries. These talks achieved little in their 13 years—except provide some of the reassurance against nasty surprises that comes of constant mutual scrutiny. They were eclipsed last year by a new effort, promoted by Mr. Mikhail Gorbachev, to deal instead with all forces in the vast area from the Atlantic to the Urals. Diplomats in Vienna are now trying to work out a formula for this more ambitious set of talks. The betting is that negotiations will start in earnest in the spring.

The switch to a much larger zone holds promise as well as danger. The main problem with the MBFR area was that geography would have made any pact unfair. American forces withdrawn as a result of it would have had to go back to the United States, more than 3,000 miles and an ocean away. The Russian ones would have pulled back only a couple of hundred miles, to the eastern border of Poland, barely an overnight rail trip away. If cuts in forces in the new zone are agreed, the American troops will still go home, but the Russian ones will have to roll back a lot farther than before.

Many more countries will be drawn into the broader negotiations: Spain, Portugal, Denmark, Norway, France, Italy, Greece and Turkey on the NATO side; Hungary, Bulgaria and Romania on the Warsaw pact side. British and American forces in Britain will now be counted, along with the American air-force units in Iceland. The NATO newcomers have ground forces of some 1.6m men and air forces of about 312,000; the three extra Warsaw pact countries have only 334,000 soldiers and 88,000 airmen. All in all, NATO outnumbers the Warsaw pact by about 90,000 men in the new zone. (See map on next page.) In the MBFR area the Warsaw pact had an advantage of some 200,000 men, and this margin, which was certainly there but never precisely admitted to, bedevilled the talks.

Politically, the new zone will be troublesome for the West: the NATO newcomers to the talks will include prickly ones such as France, Spain and Greece. In MBFR the western powers could negotiate as a team, its position co-ordinated by the NATO headquarters in Brussels. In the new talks the western stance will be worked out by a task force of senior officials from all NATO countries. It is unlikely to be able to show the coherence on the main issues that the MBFR steering group was able to command. The Warsaw pact will have no such problem: its attitudes, will flow directly from the Kremlin, and no internal dissent within its alliance is likely to confuse them.

The new reduction zone may be unwieldly but it makes it more possible than with MBFR to imagine a deal that would provide truly equal security for both sides. Here are the required ingredients:

Equal force levels.—This was agreed to as a principle in the MBFR talks, but never attained. In the "Budapest Declaration" of

June 1986, which launched the Atlantic-to-the-Urals idea, Mr. Gorbachev proposed that each side's forces should be cut by 100,000–150,000 men immediately, and by "approximately 25 percent from current levels" by the early 1990s. Given that the manpower of the two sides in the new area is roughly equal this proposal seems reasonable. But (see later) 25 percent is too much of a reduction to agree upon at the outset. The 6 percent cuts from the NATO troop levels envisaged in MBFR would be a better starting point.

Heavy equipment.—The Soviet Union has always wanted to include limits on heavy weapons such as tanks and heavy-guns as well as on manpower, NATO toyed with the idea early in the MBFR talks, but after 1979 favoured counting soldiers only. However, because it will be difficult to check the number of men scattered across the huge new area, the NATO side will drop its insistence on precisley equal numbers of soldiers and push for a deal involving equal numbers of the most important weapons. Although Mr. Gorbachev has talked mostly about manpower so far, the Russians have been briefed on the NATO change of heart and seem willing to along with it.

Shifting the main negotiating currency from men to equipment has several advantages. Equipment is easier to count than men. And concentrating on equipment will sidestep one of the most vexing issues of MBFR—how to equate Russian servicemen with NATO civilians who did militarily vital but unsoldierly things like cook or drive lorries.

Counting equipment has other advantages for NATO too. The Warsaw pact has more tanks per soldier than the West, so the West could do better to balance tanks and guns than men or divisions. However, the western side cannot ignore manpower completely; there needs to be some sort of limit on it if only because the balance of weaponry cannot cover everything. Limits on tanks and artillery pieces are probably about far as talks could go without bogging themselves down in the attempt to define "anti-tank missile" or "armoured personnel carrier" to everyone's satisfaction. Yet by placing huge numbers of lesser weapons in the hands of a vast army, the Warsaw pact could build a force that would leave NATO nervous.

Collective ceiling.—Should the limits on men and weapons be set collectively or by individual countries? The argument was only half settled in the MBFR talks. The Russians wanted individual ceilings in order to put a tight limit on the size of the West German army; which is exactly why the West didn't buy the idea. The matter was papered over in 1979 with a tentative agreement to impose individual limits only on American and Russian forces.

Russia's desired individual ceilings would have limited the West German army to just over 300,000 men, regardless of what its allies were up to. Thus, if all the American and British troops had gone home and the Benelux countries had disarmed themselves, West Germany would still have been held to that number. Under a collective MBFR ceiling, all of the men in the zone on the NATO side could theoretically have been German. Even this ceiling—700,000 was the American counter-proposal—was not one that the Germans felt comfortable with. Russia may return to its idea of individual ceilings in the enlarged negotiations. The West should fend it off. Countries such as West Germany and Turkey are prime targets for invasion and need to reserve the right to field extra men in their own defence if allies wind down their forces in the future.

Conventional forces only.—The Russians have always wanted to include battlefield nuclear weapons in the calculus of conventional force reductions. When Mr. Gorbachev proposed the new talks, he said he still wanted them to be there. The NATO side has generally been against this idea, although in the mid-1970s it wavered briefly and proposed the inclusion of some nuclear weapons in an MBFR deal. It was a bad wobble then, and it would be an even worse one now. Once a deal is struck eliminating medium-range nuclear missiles from Europe, the remaining nuclear weapons, such as bombs and artillery shells, will be the only devices that will keep the cost of a conventional attack incalculable. It might be argued that if conventional forces are evenly matched there should be no need for deterence-through-incalculability. This involves a wishful view of history. Evenly matched armies have repeatedly gone to war in Europe; and small ones have attacked big ones and won.

If it had the same number of soldiers, NATO could probably win a conventional war with the Warsaw pact because its equipment is better. But this might not deter an ambitious Russian leader, chosen in reaction to an ill-fated attempt to increase Russian wealth through liberal reforms, and seduced by the idea that he could acquire a bit of Western Europe with a quick conventional grab. Even reduced armed forces are there to prevent a war in Europe, not to ensure that one side will win a bloody conflict. Nuclear weapons backed by strong conventional forces seem to have done this preventive job; conventional ones demonstrably have not.

### CRUNCHING THE NUMBERS

One of the first problems for the more ambitious negotiations will be to set limits on the size of the American and Russian forces. In the MBFR talks this task was simple: cut the forces deployed by the two super-powers in the MBFR area (American forces in West Germany and Holland; Russian ones in East Germany, Czechoslovakia and Poland) to the same level. It was agreed that the Russians and Americans would make the first cutbacks in the zone and that the Russians would withdraw more.

The new zone will stretch far beyond an area near the inner-German border to include a big chunk of the Soviet Union as well. In this chunk the Russians keep not only combat formations but also a huge number of training bases, schools and other support establishments. Doubtless they will seek to exempt some of these forces, including tanks and heavy guns, on the grounds that they are "non-combatants", and that America has similar sorts of establishment back in the United States.

The NATO side will have to stay obdurate here: the negotiations are about forces in Europe, and it was Mr. Gorbachev himself who proposed the present Atlantic-to-the-Urals region. In an emergency, large, highly-trained forces can be squeezed out of training establishments to reinforce combat formations. Most NATO countries plan to do just this, and the western attitude in the MBFR talks has always been to insist on counting all uniformed soldiers within the zone: cooks, bakers, bottle washers, the lot.

But there is another, even greater, problem with absolute numbers. It is one thing to insist on including all types of Russian soldiers west of the Urals; it is quite another to demand that the Russians reduce their numbers in this vast region to those of the American forces in Europe (200,000 soldiers and 90,000 airmen; 5,000 tanks and 620 guns). The Russians now have some 1.8m soldiers and airmen stationed in the zone.

The simplest solution is probably to revive the old MBFR reduction zone, or something like it, and agree that within this subzone the Americans and Russians should reduce their forces to equal levels. Within the larger, Atlantic-to-the-Urals region a NATO-Warsaw pact balance would apply.

Two main problems plagued MBFR throughout its life: "data", and the arrangements for checking that the agreements were honoured. Data was shorthand for the swapping of the numbers of men and units that each side admitted it had to start with—the base-levels on which the agreed cuts would operate. The NATO side wanted a full exchange before any withdrawals; the Warsaw pact merely wanted NATO to take its word that it would do the right thing. This was hard to swallow. For years the Russians had insisted that a rough parity of forces already existed; it clearly did not, and eventually the Russians admitted as much.

Although Mr. Gorbachev has proposed an exchange of information about forces in the larger area, most western observers are waiting to see the colour of his money. In the MBFR talks the Warsaw pact's negotiators paraded figures 170,000 short of what NATO was convinced they had, and refused to help clear the matter up. This particular problem may be eased if the talks concentrate on tanks and guns instead of troops. But it could still be troublesome. Russian analysts have long insisted that NATO actually has superior forces west of the Urals. This is true (just) of men, but not of equipment.

In MBFR, NATO eventually gave up its insistence on data and proposed that the two sides get on with their initial reductions even without agreeing on the starting points. This was a ploy to show the West's flexibility and to call the Russians' bluff on their professed willingness to withdraw forces at all. There may have been some satisfaction in it for the weary and patient western negotiators in Vienna, but it was clearly no way to achieve an equitable pact. The West's reward would have been to see Russians marching away from an army whose initial size it was never to know and whose final size it could not check.

The Warsaw pact at first resisted all efforts to negotiate on-site inspections of force levels or force withdrawals. In the later years of MBFR it relaxed a bit and conceded that western observers might witness soldiers passing through a few checkpoints on their way out of the zone. Right to the end they would not hear of inspections at short notice to check that troops withdrawal had not somehow crept back into the zone.

### IT'S A LONG WAY FROM KANSAS CITY

What is now being proposed, even if the cuts are balanced and limited to 6%, would result in a worrying thinning of the NATO shield. Cuts will save money and big ones will save both blocks a great deal. But security, not economy, remains the most important thing to achieve through disarmament. Cuts that would leave, say, 500,000 men and a few hundred tanks scattered about Western Europe with perhaps fewer than half of them in West Germany, might well invite attack and a calling of the remaining nuclear bluff. Even if the Warsaw pact and the

West had the same number of tanks overall, the defenders of the West German frontier would be so thin on the ground that a few divisions of eastern block armour might roll through them to Rotterdam before NATO could put a blocking force into place.

There is another ineradicable danger for the West that Mr. Gorbachev appears particularly well aware of: inertia, both political and physical. Once NATO has made big cuts in its forces, it will find it all but impossible to restore them even if Russia reverts to a menacing posture. Millions of voices in the west would shout against breaking the rules of any arms-control agreements, regardless of whether the Warsaw pact continued to honour it. (The Russians never complied with the SALT-II limits on nuclear weapons, but President Reagan caused ructions throughout the alliance when he allowed the United States to exceed them even after the treaty had expired.)

Physical inertia could be more troublesome still. If American troops were withdrawn from Europe most of them would probably be demolished, because there would be literally nowhere in the United States to put them without building new barracks, airfields, and training grounds. Their bases in Germany, too, might well be dismantled or returned to civilian use. Once all this had been done, it would be very difficult to send the Americans back except belatedly, in response to an actual attack. Geography and totalitarianism mean that both these inertias would not restrain the Warsaw pact as strongly.

This western disadvantage will always exist, and no fiddling with the numbers or the terms of a troop-reduction treaty will change it; hence the great danger for the West in moving too far, too quickly in cutting its conventional forces. The watchword for NATO has therefore to be caution: the West could try for a small cut (around 5-6% below exiting NATO numbers), to equal force levels, with tough arrangements to check that the Warsaw pact plays by the rules. Only if the agreement seems to work properly over a number of years of peace should the West contemplate deeper cuts.

Mr. Gorbachev clearly wants a deal on conventional forces, if only to save money. Although the unhappy experience with MBFR indicates problems ahead for such a deal, the Russian leaders' drive to push through the agreement on medium-range missiles shows that he can make things happen when he wants them to. However, the opposition he has recently run into in his quest for economic reform raises new doubts about his ability to impose controversial change. The Russian Army is likely to resist fiercely any effort to trim its size, power and prestige. Even if Mr. Gorbachev can only deliver small force-cuts, the West will have to react to them with care to keep its conventional deterrence intact.

## MESSAGES FROM THE HOUSE

At 11:40 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills and joint resolutions, without amendment:

S. 557. An act to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964;

S. 1447. An act to designate Morgan and Lawrence Counties in Alabama as a single metropolitan statistical area;

S.J. Res. 251. Joint resolution designating March 4, 1988, as "Department of Commerce Day"; and

S.J. Res. 262. Joint resolution to designate the month of March 1988, as "Women's History Month."

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 90. An act to establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes.

The message further announced that pursuant to the provisions of section 9031 of Public Law 100-203, the Speaker appoints Mr. Robert J. Myers of Silver Spring, MD, to the Commission on Railroad Retirement Reform, on the part of the House from the private sector.

### ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 3:15 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 557. An act to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964;

S. 1447. An act to designate Morgan and Lawrence Counties in Alabama as a single metropolitan statistical area;

S.J. Res. 251. Joint resolution designating March 4, 1988, as "Department of Commerce Day"; and

S.J. Res. 262. Joint resolution to designate the month of March 1988, as "Women's History Month."

The enrolled bills and joint resolutions were subsequently signed by the Acting President pro tempore (Mr. REID).

---

At 7:46 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 101. A concurrent resolution providing for a conditional adjournment of the Senate from March 3, or 4, 1988, until March 14, 1988.

## MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2117. A bill to extend the statute of limitations applicable to certain claims under the Age Discrimination in Employment Act of 1967 that were filed with the Equal Employment Opportunity Commission before the date of enactment of this act.

## ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, March 3, 1988, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 251. Joint resolution designating March 4, 1988, as "Department of Commerce Day."

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2649. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on the reapportionment of an appropriation for Radio Free Europe/Radio Liberty, Inc.; to the Committee on Appropriations.

EC-2650. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on budget recissions and deferrals dated February 1, 1988; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-2651. A communication from the Administrator of Veterans' Affairs, transmitting, pursuant to law, a report on a violation of the Antideficiency Act; to the Committee on Appropriations.

EC-2652. A communication from the Director of the Defense Assistance Agency, transmitting, pursuant to law, a report containing an analysis and description of services performed by full-time USG employees as of September 30, 1987, for which reimbursement is provided: to the Committee on Armed Services.

EC-2653. A communication from the Assistant Secretary of Defense (Comptroller), transmitting, pursuant to law, a listing of contract award dates for the period March 1, 1988 to April 30, 1988; to the Committee on Armed Services.

EC-2654. A communication from the Secretary of Defense, transmitting, for the information of the Senate, his views and those of the Joint Chiefs of Staff concerning the security issues involved in funding for the Nicaraguan Democratic Resistance; to the Committee on Armed Services.

EC-2655. A communication from the Secretary of Defense, transmitting, pursuant to law, the annual report of the Department of Defense for fiscal year 1989; to the Committee on Armed Services.

EC-2656. A communication from the Chief, Program Liaison Division, Office of Legislative Liaison, Department of the Air Force, transmitting, pursuant to law, a report on experimental, developmental, and research contracts of $50,000 or more, by company; to the Committee on Armed Services.

EC-2657. A communication from the Assistant Secretary of the Army (Research, Development, and Acquisition), transmitting a draft of proposed legislation to grant the Secretary of a military department, or his designee, authority to loan without reimbursement materials, supplies, and equip-

ment to foreign governments for the purpose of cooperative research, development, testing or evaluation; to the Committee on Armed Services.

EC-2658. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice that the Defense Logistics Agency intends to exercise authority for exclusion of the clause concerning examination of records by the Comptroller General; to the Committee on Armed Services.

EC-2659. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving United States exports to the Republic of Indonesia; to the Committee on Banking, Housing, and Urban Affairs.

EC-2660. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the annual Monetary Policy Report of the Board; to the Committee on Banking, Housing, and Urban Affairs.

EC-2661. A communication from the Assistant Attorney General (Legislative Affairs), transmitting, pursuant to law, the annual report on the administration of the Equal Credit Opportunity Act for calendar year 1987; to the Committee on Banking, Housing, and Urban Affairs.

EC-2662. A communication from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, a report on a study concerning methods for increasing the use of underutilized minority thrift institutions as depositories or financial agents of Federal agencies; to the Committee on Banking, Housing, and Urban Affairs.

EC-2663. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the Monetary Policy Report of the Board; to the Committee on Banking, Housing, and Urban Affairs.

EC-2664. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report of the Fish and Wildlife Service on the administration of the Marine Mammal Protection Act for calendar year 1986; to the Committee on Commerce, Science, and Transportation.

EC-2665. A communication from the Secretary to the Federal Trade Commission, transmitting, pursuant to law, the annual report pursuant to the Federal Cigarette Labeling and Advertising Act for 1985; to the Committee on Commerce, Science, and Transportation.

EC-2666. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report on the administration of the Pipeline Safety Act for calendar year 1986; to the Committee on Commerce, Science, and Transportation.

EC-2667. A communication from the Acting Assistant Secretary of the Interior (Land and Minerals Management), transmitting, pursuant to law, notice on leasing systems for the Beufort Sea, Sale 97, scheduled to be held in March 1988; to the Committee on Energy and Natural Resources.

EC-2668. A communication from the Acting General Counsel of the Department of Energy, transmitting, pursuant to law, a new plan of action to implement the Agreement on an International Energy Program; to the Committee on Energy and Natural Resources.

EC-2669. A communication from the Acting Assistant Secretary of the Interior (Land and Minerals Management), transmitting, pursuant to law, notice on leasing system for the Central Gulf of Mexico, Sale 113, scheduled to be held in March 1988; to the Committee on Energy and Natural Resources.

EC-2670. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of excess offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2671. A communication from the Secretary of the Interior, transmitting, pursuant to law, the financial statements of the Colorado River Basin Project for fiscal year 1986; to the Committee on Energy and Natural Resources.

EC-2672. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the report of Safeguards Information by the Nuclear Regulatory Commission for the quarter ended December 31, 1987; to the Committee on Environment and Public Works.

EC-2673. A communication from the Deputy Administrator of the Federal Highway Administration, transmitting, pursuant to law, a report on the status of demonstration projects authorized by the Surface Transportation and Uniform Relocation Assistance Act of 1987; to the Committee on Environment and Public Works.

EC-2674. A communication from the Administrator, General Services Administration, transmitting, pursuant to law, prospectuses for the fiscal year 1989 General Services Administration's Public Buildings Service Capital Improvement Program; to the Committee on Environment and Public Works.

EC-2675. A communication from the Director, United States Arms Control and Disarmament Agency, transmitting, pursuant to law, a report entitled "Fiscal Year 1989 Arms Control Impact Statement;" to the Committee on Foreign Relations.

EC-2676. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, a report on a Presidential Determination relative to keeping the U.S. Embassy Antigua open; to the Committee on Foreign Relations.

EC-2677. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, the tenth 90-day report to Congress on the investigation into the death of Enrique Camerena; to the Committee on Foreign Relations.

EC-2678. A communication from the Secretary of State, transmitting, pursuant to law, a report that Israel is not being denied its right to participate in the activities of the International Atomic Energy Agency to the Committee on Foreign Relations.

EC-2679. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Evaluation of the Rural Hospital Swing-Bed Program;" to the Committee on Finance.

EC-2680. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on rural teaching hospitals and referral centers; to the Committee on Finance.

EC-2681. A communication from the Administrator of the Agency for International Development, transmitting, pursuant to law, a report on program allocations for fiscal year 1988; to the Committee on Foreign Relations.

EC-2682. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, reports for the period April 1987-September 1987 listing voluntary contributions made by the United States Government to International Organizations; to the Committee on Foreign Relations.

EC-2683. A communication from the Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law the annual report of the Commission on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2684. A communication from the Director of the Office of Government Ethics, transmitting a draft of proposed legislation to extend the authorization of appropriations for the Office of Government Ethics for six years; to the Committee on Governmental Affairs.

EC-2685. A communication from the Assistant Secretary of Transportation (Administration), transmitting, pursuant to law, notice of a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-2686. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, a report entitled "Performance Management and Recognition System: Linking Pay to Performance"; to the Committee on Governmental Affairs.

EC-2687. A communication from the Executive Director of the Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the annual report of the Corporation on competition advocacy; to the Committee on Governmental Affairs.

EC-2688. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the annual report of the Commission on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2689. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, the annual report of the Board on the number of appeals submitted, the number processed to completion, and the number not completed by the originally announced date for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2690. A communication from the Administrator of General Services, transmitting, pursuant to law, the annual report of the General Accounting Office on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2691. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-141 adopted by the Council on January 19, 1988; to the Committee on Governmental Affairs.

EC-2692. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-142 adopted by the Council on January 19, 1988; to the Committee on Governmental Affairs.

EC-2693. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-143 adopted by the Council on January 19, 1988; to the Committee on Governmental Affairs.

EC-2694. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-144 adopted by the

Council on January 18, 1988; to the Committee on Governmental Affairs.

EC-2695. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the annual report of NASA on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2696. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the annual report of the Agency on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2697. A communication from the Secretary of Energy, transmitting, pursuant to law, the annual report of the Department of Energy on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2698. A communication from the Director of the Administrative Office of the United States Courts, transmitting, pursuant to law, actuarial reports on the judicial survivors' annuities system and the judicial retirement system for calendar year 1986; to the Committee on Governmental Affairs.

EC-2699. A communication from the Chairman of the Federal Labor Relations Authority, transmitting, pursuant to law, the annual report of the Authority on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2700. A communication from the Secretary of Commerce, transmitting, pursuant to law, the annual report of the Department of Commerce on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2701. A communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a list of reports issued by the General Accounting Office during January 1988; to the Committee on Governmental Affairs.

EC-2702. A communication from the Administrator of the Panama Canal Commission, transmitting, pursuant to law, the annual report of the Commission on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2703. A communication from the Acting Attorney General, transmitting, pursuant to law, the annual report of the Department of Justice on competition advocacy for fiscal year 1987; to the Committee on Governmental Affairs.

EC-2704. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, an interim report on the Senior Executive Service dated February 1988; to the Committee on Governmental Affairs.

EC-2705. A communication from the Acting Attorney General, transmitting, pursuant to law, a report on the amounts deposited in the U.S. Trustee System Fund and a description of the expenditures; to the Committee on the Judiciary.

EC-2706. A communication from the President of the National Endowment for Democracy, transmitting, pursuant to law, the annual report of the Endowment under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2707. A communication from the Special Counsel to the Merit Systems Protection Board, transmitting, pursuant to law, the annual report of the Board under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2708. A communication from the Assistant Vice President of the National Railroad Passenger Corporation (Government and Public Affairs), transmitting, pursuant to law, the annual report of the Corporation under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2709. A communication from the Chairman of the Federal Labor Relations Authority, transmitting, pursuant to law, the annual report of the Authority, the General Counsel of the Federal Labor Relations Authority, and the Federal Impasses Panel under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2710. A communication from the Executive Secretary to the National Security Council, transmitting, pursuant to law, the annual report of the Council under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2711. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the annual report of the Department of State under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2712. A communication from the Director of Communications and Legislative Affairs, Equal Employment Opportunity Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2713. A communication from the solicitor of the U.S. Commission on Civil Rights, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2714. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the annual report of the Administration under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2715. A communication from the Chairman of the Merit Systems Protection Board, transmitting, pursuant to law, annual report of the Board under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2716. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2717. A communication from the Administrator of Veterans' Affairs, transmitting, pursuant to law, the annual report of the Veterans' Administration under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2718. A communication from the Chairman of the Commodity Futures Trading Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2719. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, the annual report of the Administration under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2720. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1987; to the Committee on the Judiciary.

EC-2721. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report of HHS on the Freedom of Information activities as required by the Freedom of Information Act; to the Committee on the Judiciary.

EC-2722. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report for fiscal year 1987 of the Administration on Aging; to the Committee on Labor and Human Services.

EC-2723. A communication from the Chairman, President's Cancer Panel, transmitting, pursuant to law, the Chairman's 1987 report to the President; to the Committee on Labor and Human Resources.

EC-2724. A communication from the Secretary of Education, transmitting, pursuant to law, the 10th annual report of the Department of Education on the progress being made toward the provision of free appropriate public education to all handicapped children; to the Committee on Labor and Human Resources.

EC-2725. A communication from the Under Secretary, National Society of the Daughters of the American Revolution, transmitting, pursuant to law, a report on the "Annual Proceedings of the Ninety-Sixth Continental Congress;" to the Committee on Rules and Administration.

EC-2726. A communication from the Executive Secretary, Office of the Secretary of Defense, transmitting, pursuant to law, the report on Department of Defense procurement from small and other business firms for October through December 1987; to the Committee on Small Business.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-410. A resolution adopted by the Council of the County of Hawaii, Hawaii, favoring the appropriation of Federal funds for improvements to Saddle Road; to the Committee on Appropriations.

POM-411. Joint resolution adopted by the Legislature of the State of California; to the Committee on Banking, Housing, and Urban Affairs.

"Whereas, A sound, stable monetary system is vital to a free nation to protect the economic and political well-being and liberty of its citizens; and

"Whereas, The present monetary system administered by the federal reserve was established to (1) end the prior "boom and bust" cycles of the United States economy, (2) stabilize the currency, (3) end farm foreclosures, and (4) provide for expansion of the money supply when needed; and

"Whereas, Past history indicates that the federal reserve has failed to achieve the objectives laid down when it was established in that, under the monetary system, our states and our people have suffered (1) recurring recession cycles, (2) a loss of 90 percent of the purchasing power of the dollar, and (3) farm foreclosures of thousands per week

during the Great Depression of the 1930's; and

"Whereas, No other issue affects our states and our people as directly, in that labor, farmers, and business are absolutely dependent on the nation's monetary system; and

"Whereas, The Congress enacted the Federal Banking Agency Audit Act of 1978, which required the Comptroller General to audit the Federal Reserve Board and federal reserve banks; and

"Whereas, The Federal Banking Agency Audit Act was instituted as a result of a federal study and congressional oversight hearings which discovered significant inadequacies in the operation of federal banking agencies; and

"Whereas, The Federal Banking Agency Audit Act prohibited the Comptroller General from auditing Federal Reserve deliberations, discussions, or actions on monetary policy matters; now, therefore, be it

*"Resolved,* by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to amend federal law to require the Comptroller General to annually audit the federal reserve's conduct of the nation's monetary policy, including the efficacy with which that policy has been and is conducted with regard to achieving the purposes for which the monetary system was established; and be it further

*"Resolved,* That the Legislature recommends that the audit include, but not be limited to: (1) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations; and (2) transactions made under the direction of the Federal Open Market Committee; and the Legislature also recommends that the results of the audit be transmitted to the appropriate oversight committees of the Congress; and be it further

*"Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States and to each Senator and Representative from California in the Congress of the United States."

---

POM-412. A resolution adopted by the Commission of the City of Miami, Florida favoring an increased Coast Guard presence in South Florida; to the Committee on Commerce, Science, and Transportation.

POM-413. A petition from citizens of Agana, Guam praying for a redress of grievances; to the Committee on Energy and Natural Resources.

POM-414. Joint resolution adopted by the Legislature of the State of Maine; to the Committee on Environment and Public Works.

"JOINT RESOLUTION

"Whereas, for nearly a decade, the State has sought to develop a new marine dry cargo terminal with rail and highway access on Sears Island in Searsport; and

"Whereas, the project is designed to meet certain specific objectives of the State and its export-import dependent industries. These objectives are:

"1. To provide transportation cost savings to Maine-based industries, especially the forest products industry, through reduced overland travel distances to a port;

"2. To generate jobs and other economic activity within Maine directly related to the export-import traffic;

"3. To induce jobs and economic growth in Maine-based industries indirectly benefiting by proximity to a modern port;

"4. To target state investments in port facilities where new jobs and economic activity is most needed; and

"5. To concentrate economic development along Maine's coastline in localized areas to protect the environmental values of the coastline consistent with state environmental and conservationist objectives; and

"Whereas, the encouragement of exporting by United States business and industry is a national priority due to this nation's serious foreign trade imbalance; and

"Whereas, the value of the American dollar is at a record low, offering United States exporters an excellent opportunity to establish new foreign markets and to recapture markets lost when the dollar was at a record high; and

"Whereas, the Federal Highway Administration, acting as lead agency, has recently issued and approved a Final Environmental Impact Statement on the Sears Island Project and this document now serves as a basis for review of application to the United States Army Corps of Engineers and the United States Coast Guard for permits to proceed with the project; and

"Whereas, the proposed Sears Island cargo teminal is strongly supported by Governor McKernan, the entire Maine Congressional Delegation, the Waldo County Commissioners and the Town of Searsport and in 2 separate bond issues the voters of Maine have also given their approval to this project; and

"Whereas, the proposed dry cargo terminal for Sears Island would make a valuable contribution toward the expansion of export trade and thereby greatly assist the Maine and national economy; now, therefore, be it

*"Resolved,* That the 113th Maine Legislature calls upon President Ronald W. Reagan to request immediate assistance and support in securing prompt action by the Federal Government on all pending permits and requests for federal aid associated with the construction of the proposed Sears Island Dry Cargo Terminal Project; and be it further

*"Resolved,* That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the President of the Senate and the Speaker of the House of Representatives in the Congress of the United States and to each Member of the Maine Congressional Delegation."

---

POM-415. A resolution adopted by the Board of Chosen Freeholders of the County of Monmouth, New Jersey favoring an investigation of insufficient reimbursements by the Medicare program to HMO-NJ; to the Committee on Finance.

POM-416. A concurrent resolution adopted by the Legislature of the Commonwealth of Pennsylvania; to the Committee on Governmental Affairs.

"A CONCURRENT RESOLUTION

"Whereas, The population count as ascertained at the decennial census is used by the United States Bureau of the Census in the automatic apportionment formula by which representation in the United States House of Representatives is apportioned among the several states following each decennial census; and

"Whereas, The Bureau of the Census includes in this population figure all persons living in the United States on the day of the census without regard to legal residence in this country; and

"Whereas, Aliens illegally residing in this country and aliens without permanent resident status clearly are not entitled to vote and exercise other rights of participation in the political process and the inclusion of such persons in the figures upon which representation is to be based is inconsistent with this fact; and

"Whereas, The counting of such aliens demonstrably does distort the apportionment of representation in the United States House of Representatives; and

"Whereas, It is imperative that the United States Bureau of the Census use its resources and expertise to achieve the highest possible degree of accuracy in the actual numbers counted in the 1990 decennial census and thereafter; and

"Whereas, The implementation of an adjustment of the actual numbers counted in the census through a post-enumeration survey will detract and divert resources from the effort of achieving the most accurate count possible of actual numbers in the census itself; and

"Whereas, The implementation of an adjustment will discourage various interest groups from working to ensure that the most accurate count possible will be obtained in the actual census; and

"Whereas, The post-enumeration survey should be used only to evaluate the census and to improve its process in the future and should not be used to replace the actual numbers counted in the census; and

"Whereas, Implementation of adjusted figures will provide a census with two sets of numbers and will likely result in lawsuits challenging the validity of the adjusted figures over the actual count and raise constitutional issues for states desiring to use the actual count for intrastate reapportionment; and

"Whereas, The United States Bureau of the Census currently excludes from its official census figures United States citizens who are temporarily residing overseas, including missionaries, service personnel, business representatives, students and the spouses and dependents of such people; and

"Whereas, These citizens temporarily residing overseas have the right to vote through the absentee voter process and are thereby entitled to representation; and

"Whereas, The exclusion of these citizens from the official census figures results in their home states being denied proportional representation in the United States House of Representatives; therefore be it

*"Resolved,* That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United States to enact legislation to:

"(1) require the United States Bureau of the Census to adopt procedures for the census of 1990 and thenceforth which will exclude illegal aliens and aliens admitted for temporary residences pursuant to the Immigration Reform and Control Act of 1986 from the figures upon which apportionment in the United States House of Representatives will be determined;

"(2) prohibit the United States Bureau of the Census from adjusting the actual census figures in the 1990 census and thereafter through the use of a post-enumeration survey; and

"(3) require the United States Bureau of the Census to develop and adopt procedures for including United States citizens temporarily residing overseas in the census of 1990 and thereafter; and be it further

*"Resolved,* That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania."

---

POM-417. A concurrent resolution adopted by the Legislature of the Commonwealth of Pennsylvania; to the Committee on Governmental Affairs:

"A CONCURRENT RESOLUTION

"Whereas, American clock and watchmakers were among the most ingenious craftsmen of the 19th century; and

"Whereas, The greatest achievement of American clock and watchmakers during the 19th century was the mass production of clocks and watches with completely interchangeable parts; and

"Whereas, Modern horologists have carried the skill of the 19th century craftsmen forward, refining the intricacies of clock and watchmaking beyond ordinary comprehension; and

"Whereas, The National Association of Watch and Clock Collectors, Inc., a nonprofit, scientific and educational oganization founded in 1943 to bring people interested in horology together, is headquartered in Columbia, Pennsylvania; and

"Whereas, The United States Postal Service has honored numerous groups and individuals for their contributions to the United States; therefore be it

*"Resolved (the House of Representatives concurring),* That the General Assembly of the Commonwealth of Pennsylvania urge the Citizen Stamp Advisory Committee of the United States Postal Service to issue a stamp honoring American horology; and be it further

*"Resolved,* That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress, to each member of Congress from Pennsylvania and to Mr. Belmont Faries, Chairman, Citizen Stamp Advisory Committee of the United States Postal Service."

---

POM-418. A concurrent resolution adopted by the Legislature of the Commonwealth of Pennsylvania; to the Committee on Governmental Affairs:

"A CONCURRENT RESOLUTION

"Whereas, On October 1, 1990, the Pennsylvania Turnpike Commission will be celebrating the 50th Anniversary of the opening of the Pennsylvania Turnpike; and

"Whereas, Opened on October 1, 1940, the Pennsylvania Turnpike was the first high-speed, multi-lane highway in the United States; and

"Whereas, Today, the Pennsylvania Turnpike extends from the Ohio state line to the Delaware River Bridge on the New Jersey state line and from Norristown to Scranton along the Northeastern Extension, a total of 470 miles; and

"Whereas, The opening of the Pennsylvania Turnpike established Pennsylvania as a leader in highway design, construction and maintenance and set the pattern for turnpikes in other states and for the Interstate highway system; and

"Whereas, Today, the Pennsylvania Turnpike handles nearly 200,000 motor vehicles daily and remains an essential part of the national super highway system; therefore be it

*"Resolved (the House of Representatives concurring),* That the General Assembly of the Commonwealth of Pennsylvania urge the Citizen Stamp Advisory Committee of the United States Postal Service to issue a stamp commemorating the 50th Anniversary of the opening of the Pennsylvania Turnpike; and be it further

*"Resolved,* That copies of this resolution be transmitted to the President of the United States, to the presiding officers of each house of Congress, to each member of Congress from Pennsylvania and to Mr. Belmont Faries, Chairman, Citizen Stamp Advisory Committee of the United States Postal Service."

POM-419. A resolution adopted by the Nineteenth Guam Legislature; to the Committee on Governmental Affairs:

"A RESOLUTION

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, the role of the U.S. Veterans Administration is to administer the benefits to several million veterans of the U.S. Armed Forces who served in World Wars I and II, the Korean Conflict, Vietnam, and Granada; and

"Whereas, the VA has an annual budget ranked fifth among existing federal departments; and

"Whereas, the Veterans Administration ranks second only to the Department of Defense in number of personnel (over 253,000 employees); and

"Whereas, the Veterans Administration operates a 10,000 acre National Cemetery system consisting of 111 cemeteries in 38 states and the territories of Puerto Rico and Guam; and

"Whereas, H.R. 3471, "The Department of Veterans Affairs Act of 1987", will elevate the U.S. Veterans Administration to a Cabinet-Level department within the Federal Government; and

"Whereas, major provisions of the bill propose to designate the VA as the Department of Veterans Affairs, an Executive Department; provides for Presidential appointment and Senate confirmation of a Secretary of Veterans Affairs and a Deputy Secretary; upgrades the current VA Medicine and Surgery Department to that of the Veterans Health Services Administration as well as the Department of Veterans Benefit to that of a new Veterans Benefit Administration; and

"Whereas, President Ronald Reagan announced his support of the measure in a meeting at the White House on the eve of Veterans Day; and

"Whereas, this agency operates the largest health care system in the free world, employing over 12,000 physicians and over 35,000 registered nurses; and

"Whereas, the VA administers one of the largest home loan guaranty programs in the federal government, having extended some $263 billion in home loan guarantees since 1944; and

"Whereas, almost $15 billion in annual compensatiuon and pension benefits are disbursed to some four million veterans and their survivors; and

"Whereas, this governmental entity operates a gigantic life insurance program which presently provides some $200 billion in coverage for 7.2 million veterans and military personnel; and

"Whereas, H.R. 3471 received favorable testimony in a recent congressional hearing in which as distinguished national legislative leaders as the Honorable Jack Brooks (D-Texas), Chairman of the House Governmental Operations Committee; the Honorable G.V. "Sonny" Montgomery (D-Mississippi), Chairman of the House Veterans Affairs Committee; the Honorable Strom Thurmond (R-S. Carolina); the Honorable Gerald B. Solomon (R-New York), ranking minority memnber of the House Veterans Affairs Committee; and the Honorable Douglas Applegate (D-Ohio) emphasized the equal obligation of the nation to care for the men and women who have defended our country in times of peril; and

"Whereas, the VA implements a variety of education and training programs that have rehabilitated and educated over 188 million beneficiaries since World War II; and

"Whereas, all the national veterans organizations have sought this goal of upgrading the VA in order that services, programs, and benefits for the veterans and their survivors would be enhanced; and

"Whereas, it would be reasonably safe to conclude that the results of the passage of H.R. 3471 would positively affect the delivery of services and benefits to over 12,000 Guamanian veterans; now, therefore, be it

*"Resolved,* that the Nineteenth Guam Legislature endorse and support the passage of H.R. 3471, "The Department of Veterans Affairs Act of 1987", which would elevate the U.S. Veterans Administration to cabinet-level status; and be it further

*"Resolved,* That the Nineteenth Guam Legislature also solicit affirmative action from each Member of the U.S. Congress for the expeditious passage of H.R. 3471; and be it further

*"Resolved,* That the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Honorable Ronald Reagan, President of the United States; the Honorable Jim Wright, Speaker, U.S. House of Representatives; to the Honorable George Bush, President of the U.S. Senate; to the Honorable Strom Thurmond, President Pro Tem of the U.S. Senate; to the Honorable Jack Brooks, Chairman of the House Governmental Operations Committee; to the Honorable John Glenn, Chairman, Senate Governmental Affairs Committee; to the Honorable G.V. "Sonny" Montgomery, Chairman of the House Veterans Committee; to the Honorable Gerald B. Solomon, ranking minority member of the House Veterans Affairs Committee; to the Honorable Douglas Applegate; to the Honorable Ben Blaz, Guam's Washington Delegate; to General Turnage, Administrator, U.S. Veterans Administration; to the presidents of Guam's Veterans organizations; to the national veterans groups; to John Blaz, of the Guam Veterans Affairs Office; to Robert Bennett of the Guam Veterans Regional Medical Clinic; and to the Governor of Guam."

---

POM-420. A resolution adopted by the Senate of the Commonwealth of Massachusetts; to the Committee on Labor and Human Resources:

"A RESOLUTION

"Whereas, one of the most important basic resources of a country is the health and vitality of its citizens; and

"Whereas, many citizens of the United States are financially prohibited from obtaining adequate health care; and

"Whereas, in the world health community the United States ranked with such countries as the Union of South Africa who also lack a national health care plan; now therefore be it

*"Resolved,* That the Massachusetts Senate respectfully urges the Congress of the United States to enact legislation providing for a comprehensive national health care

plan and to fund such plan; and be it further

*"Resolved,* That a copy of these resolutions be transmitted forthwith by the Clerk of the Senate to the President of the United States, the Presiding Officer of each branch of Congress and to each member thereof from the Commonwealth."

---

POM-421. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"JOINT RESOLUTION

"Whereas, There is a state and federal jurisdiction over employee welfare plans which provide health benefits pursuant to the Employee Retirement Income Security Act of 1974 (ERISA); and

"Whereas, The Employee Retirement Income Security Act's preemption of state control over self-insured plans in areas such as mandated benefit packages and continuation of coverage hampers solutions to uncompensated care problems at the state level; and

"Whereas, Information is sparse regarding the impact of self-insured plans on the delivery of health care in the United States; now, therefore be it

*"Resolved, by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to authorize and provide funding for a study by the General Accounting Office, to analyze health care policy and delivery systems for the purpose of guiding the Congress of the United States and state legislatures in the enactment of health care legislation; and be it further

*"Resolved,* That the study consider all of the following:

"(a) The effect of the Employee Retirement Income Security Act's preemption of state regulation of self-insured plans.

"(b) The effect of the cost shift from the federal government to state governments and private payers.

"(c) Cause of inflation of health care costs.

"(d) The role of the federal and state governments in the health care area; and be it further

*"Resolved,* That the Legislature of the State of California requests the National Conference of State Legislatures to urge Congress to make changes in the ERISA preemption in order to allow the state to address adequately the issue of uncompensated care; and be it further

*"Resolved,* That the Legislature of the State of California respectfully memorializes the Governor of the State of California to request the National Conference of Governors to urge Congress to make changes in the ERISA preemption in order to allow the states to address adequately the issue of uncompensated care; and be it further

*"Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Governor of the State of California, and to the National Conference of State Legislatures."

---

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations, without amendment and with a preamble:

S.J. Res. 235: Joint resolution deploring the Soviet Government's active persecution of religious believers in Ukraine.

S. Con. Res. 82: A concurrent resolution urging the German Democratic Chief of State Erich Honecker to repeal permanently the order directing East German border guards to shoot to kill anyone who, without authorization, attempts to cross the Berlin Wall, and to issue an order to tear down the Berlin Wall.

By Mr. BENTSEN, from the Committee on Finance, with an amendment in the nature of a substitute and an amended preamble:

S. Con. Res. 94: A concurrent resolution to express the sense of the Congress regarding relief for the U.S. soybean industry under section 301 of the Trade Act of 1974.

By Mr. PELL, from the Committee on Foreign Relations, with an amendment and an amended preamble:

S. Con. Res. 99: A concurrent resolution condemning North Korea's support for terrorist activities.

---

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance:

Mark Sullivan III, of Maryland, to be general counsel for the Department of the Treasury.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. PELL, from the Committee on Foreign Relations:

Eugene J. McAllister, of Virginia, to be an Assistant Secretary of State:

Bill K. Perrin, of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cyprus.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Bill K. Perrin.

Post: Cyprus.

Contributions, amounts, date, and donee:

1. Self: $5,000.00, 1984 Texas Victory Committee.

2. Spouse: Kathleen M. Perrin (AKA Courtenay): $100.00, 1983, Republican Party of Texas; $30.00, 1983, Presidential Task Force; $25.00, 1983, Republican National Committee; $500.00, 1984, Friends of Phil Gramm; $35.00, 1984, Republican National Committee; $10.00, 1984, Presidential Task Force.

3. Children and Spouses Names: William Bret Perrin, None.

4. Parents Names: Cecil F. Perrin (Deceased), Helen J. Perrin (Bass), None.

5. Grandparents—Paternal: W.H. Perrin (Deceased), None. Cora Perrin (Deceased), None. *Maternal:* Gwenda B. Armour (Deceased), None. Albert Armour (Deceased), None.

6. Brothers and Spouses Names: None.

7. Sisters and Spouses Names: Janice M. Howard, None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

---

Edward Morgan Rowell, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Portugal, to which position he was appointed during the last recess of the Senate.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Edward Morgan Rowell.

Post: Lisbon.

Contributions, amount, date and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses Names: Edward Oliver Rowell, None. Christopher Douglas Rowell, None. Karen Rowell Schuler, None. Timothy D. Schuler, None.

4. Parents Names: Edward Joseph Rowell, deceased 1974. Mary Helen Mohler Rowell, deceased 1971.

5. Grandparents Names: Edward Francis Rowell (d. 1937), Anne W. Clark Rowell (d. 1959), Frederick Mohler (d. 1947), Mary Tietje Mohler (d. 1950).

6. Brothers and Spouses Names: Frederic Clark Rowell, None. Barbara Elizabeth Erdman Rowell, None.

7. Sisters and Spouses Names: None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurante.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

---

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated.

By Mr. PROXIMIRE:

S. 2125. A bill to amend the Internal Revenue Code of 1986 to terminate the exclusion from gross income of Americans working abroad, and for other purposes; to the Committee on Finance.

By Mr. HECHT:

S. 2126. A bill to require the construction of certain facilities at the Ioannis A. Lougaris Veterans' Administration Medical Center in Reno, NV; to the Committee on Veterans' Affairs.

By Mr. HECHT (for himself and Mr. REID):

S. 2127. A bill to direct the Secretary of the Interior to transfer a certain parcel of land in Clark County, NV; to the Committee on Energy and Natural Resources.

By Mr. WARNER (for himself, Mr. CHAFEE, Mr. TRIBLE, Mr. MURKOW-

SKI, Mr. COHEN, Mr. MITCHELL, Mr. STEVENS, and Mr. PELL):

S. 2128. A bill to amend the Internal Revenue Code of 1986 to permit tax-free sales of diesel fuel for use by fishery vessels; to the Committee on Finance.

S. 2129. A bill to amend the Internal Revenue Code of 1986 to repeal the application of the uniform capitalization rules with respect to animals produced in a farming business; to the Committee on Finance.

By Mr. WILSON:

S. 2130. A bill to provide that the Consumer Product Safety Commission amend its regulations regarding lawn darts; to the Committee on Commerce, Science, and Transportation.

By Mr. D'AMATO:

S. 2131. A bill to amend the Immigration and Nationality Act to provide lawful temporary resident status for certain aliens based upon petitions submitted to the Attorney General on behalf of such aliens by sponsoring employers and labor unions, and for other purposes; to the Committee on the Judiciary.

S. 2132. A bill to authorize the original enlistment of certain aliens in the Armed Forces of the United States and the militias of the several States, to provide temporary and permanent resident status to such enlisted members, and for other purposes; to the Committee on the Judiciary.

S. 2133. A bill to provide for the legalization of certain aliens and to provide for units of assessment to determine the qualification of aliens for such status; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. HELMS, Mr. KERRY, Mr. KENNEDY, Mr. DURENBERGER, Mr. GRAHAM, Mr. HEFLIN, Mr. DOLE, Mr. SPECTER, Mr. THURMOND, Mr. MURKOWSKI, Mr. CRANSTON, Mr. DECONCINI, Mr. MCCLURE, Mr. LEAHY, Mr. GARN, Mr. GRASSLEY, Mr. SYMMS, Mr. SIMPSON, Mr. TRIBLE, Mr. DOMENICI, Mr. COCHRAN, Mr. PRESSLER, and Mr. WILSON):

S. 2134. A bill to impose sanctions against the Republic of Panama; to the Committee on Foreign Relations.

Mr. WEICKER (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. PELL, and Mr. STEVENS):

S.J. Res. 269. To designate the week beginning October 30, 1988, as "National Marine Technology Week"; to the Committee on the Judiciary.

S.J. Res. 270. Joint resolution designating June 26 through July 2, 1988, as "National Safety Belt Use Week"; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER (for Mr. SIMPSON (for himself, Mr. CHAFEE, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. COCHRAN, Mr. SPECTER, Mr. QUAYLE, Mr. HEINZ, Mr. MCCONNELL, Mr. BOND, Mr. EVANS, Mr. KASTEN, Mr. D'AMATO, Mr. WALLOP, Mr. HUMPHREY, Mr. WARNER, Mr. GARN, Mr. DOMENICI, Mr. GRAMM, and Mr. GRASSLEY)):

S. Res. 390. A resolution to express the sense of the Senate with respect to establishing conditions for the execution of arrests warrants compelling the attendance of absent Senators; to the Committee on Rules and Administration.

By Mr. BYRD:

S. Con. Res. 101. A concurrent resolution providing for a conditional adjournment of the Senate from March 3 or 4, 1988, until March 14, 1988; considered and agreed to.

By Mr. DANFORTH (for himself, Mr. PELL, Mr. BOND, and Mr. SARBANES):

S. Con. Res. 102. A concurrent resolution to express the sense of the Congress regarding the contributions of John Foster Dulles in international affairs; placed on the calendar.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PROXMIRE:

S. 2125. A bill to amend the Internal Revenue Code of 1986 to terminate the exclusion from gross income of Americans working abroad, and for other purposes; to the Committee on Finance.

TERMINATION OF EXCLUSION FOR CITIZENS OR RESIDENTS OF THE UNITED STATES

Mr. PROXMIRE. Mr. President, I am today introducing legislation to close a $1.2 billion tax loophole. This loophole allows Americans who work and reside abroad to exclude $70,000 from their earned income in calculating their taxes.

When the current exclusion was proposed in 1981, it was looked to as a means of lowering our trade deficit. Congress hoped to increase the number of Americans working abroad and lower the costs to U.S. firms of doing business overseas, thus giving a great boost to U.S. companies trying to market their products in a foreign market.

Some of these people, however, are working for foreign companies, helping them to increase their share of the U.S. market or to compete with U.S. firms in overseas markets. At a time when too many U.S. companies are buying parts from abroad or moving their production facilities altogether out of the United States this loophole just doesn't make sense. It is not based on need or situation.

Over the past 10 years this exclusion has jumped from $20,000 to $70,000 for every person. Meanwhile, the trade deficit has ballooned to over $159 billion per year.

Most economists would agree that reducing the budget deficit would be a major step toward improving the trade deficit. This $1.2 billion tax loophole would be a good place to start.

In the face of these huge budget deficits, how can we in Congress ask our citizens at home to tighten their belts while those abroad continue to live high on the hog?

It is ludicrous to give people nearly a $20,000 break on their taxes to help them face the hardships of living in Toronto, London, Paris, or other places favored by Americans overseas. These people are using many of the services of the U.S. Government. They receive the protection of the American military and the benefit of the U.S. Embassy in their area. They should pay taxes just as American citizens at home.

This legislation will go much further in reducing the twin deficits of trade and budget than this tax break ever has. I would urge my colleagues to cosponsor this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2125

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. TERMINATION OF EXCLUSION FOR CITIZENS OR RESIDENTS OF UNITED STATES.

(a) IN GENERAL.—Section 911 of the Internal Revenue Code of 1986 (relating to exclusion of earned income of citizens or residents of the United States living abroad) is amended by adding at the end thereof the following new subsection:

"(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1988."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1988.

By Mr. HECHT:

S. 2126. A bill to require the construction of certain facilities at the Ioannis A. Lougaris Veterans' Administration Medical Center in Reno, NV; referred to the Committee on Veterans' Affairs.

CONSTRUCTION AT THE IOANNIS A. LOUGARIS VETERANS' ADMINISTRATION MEDICAL CENTER

● Mr. HECHT. Mr. President, I rise today to introduce legislation which will provide the veterans of Nevada with the first-rate health care they deserve. Specifically, my legislation will help to rebuild and modernize the Ioannis Lougaris Veterans' Administration Medical Center in Reno, NV.

Currently, this is the only VA hospital located in Nevada, so you can see how important it is to have a facility in good condition. Quite frankly, Mr. President, the Reno VA Hospital is badly in need of repair. It was designed before World War II and constructed from 1945 to 1948. The building falls considerably below modern building standards. Central air-conditioning is nonexistent in patient rooms, which can be especially dangerous because of the extreme variation of temperature in Reno's high desert climate. The mechanical, electrical, and plumbing systems in this building are 30 to 40 years old and nearly at the end of their useful lives. Even basic fire sprinklers and smoke evacuation systems do not exist in the main building. Mr. President, this hospital

just isn't safe anymore for Nevada's veterans.

And, yet, the need, Mr. President, for a modern state-of-the-art facility is growing as the number of veterans in the State increases. Nevada has one of the fastest growing veterans populations in the country. Because of the State's beautiful dry climate, many veterans are attracted to Nevada for retirement. In both Clark County and the remainder of the State, Nevada's veterans population increased by about 2,000 individuals a year.

In fact, Mr. President, considering the small population of our State, the percentage of veterans in Nevada compared to the rest of the population is one of the highest in the country.

Not only is the Reno VA Medical Center the only acute care facility in the State, but it also draws patients from one of the largest geographical areas in the VA system. This hospital serves all veterans of Nevada except those in Clark County and those in counties which border Utah. In any given year, the hospital in Reno treats about 5,000 inpatients. It also serves veterans in California who are located in the eastern slope counties of the Sierra Nevadas.

Mr. President, we have been sucessful in moving up the construction date for a joint Air Force/Veterans' Administration Hospital at Nellis Air Force Base near Las Vegas to 1990. Nevertheless, Nevada's veterans can't wait until 1990. They need top-flight health care now.

This is why it is so crucial, Mr. President, that this project get under way now. For the veterans who have given so much to protect this country and the world, my legislation to rebuild and modernize the Reno VA Medical Center must be passed by this Congress.●

---

By Mr. HECHT (for himself and Mr. REID):

S. 2127. A bill to direct the Secretary of the Interior to transfer a certain parcel of land in Clark County, NV; to the Committee on Energy and Natural Resources.

TRANSFER OF CERTAIN LAND IN CLARK COUNTY, NEVADA

● Mr. HECHT. Mr. President, I rise today to introduce important legislation on behalf of Nevada's senior citizens. My legislation will ensure the establishment of a low-income mobile home park for senior citizens in southern Nevada.

In 1978, the Las Vegas Jaycees asked the Bureau of Land Management [BLM] for a specific parcel of land for a low-income mobile home park for senior citizens. Since this exchange had never been tried in the past by a nonprofit group, the Jaycees agreed to develop and run the project through the Clark County Housing Authority. Unfortunately, a lawsuit then occurred with a competing interest, and for the next 6 years plans to establish the mobile home park were blocked.

Mr. President, my legislation will ensure that the Federal land in question will be transferred to Clark County, NV, by the Secretary of the Interior for a low-income mobile home park for senior citizens. Mr. President, there is a great need in Nevada for low-cost housing for seniors. Because of the State's beautiful dry climate, many retirees are attracted to Nevada for retirement. Las Vegas is home to approximately 103,000 seniors, who comprise roughly 18 to 20 percent of the population. Though retirement projects are being built at a rapid rate everywhere in Nevada, these projects are priced for the middle- to upper-income seniors. Rental prices which often include meals and other services run from $895 to $1,870 or more per month for a two bedroom apartment. Many retirees just can't afford these prices and so they are often forced to accept inadequate housing or even leave for other States where more housing options are available to them.

Mr. President, the number of senior citizens is growing rapidly in the United States. Researchers predict that by the year 2025, one in every four Americans will be over the age of 65. The older population in this country today is the largest it has ever been. It is growing almost twice as fast as the rest of the population. The reason for this rapid growth is clear. Americans are simply living longer today than they ever have before. Moreover, they find themselves in excellent health and while maybe not maintaining the hectic schedules of their youth, wish to remain creative, active members of society. But how can they be contributing members of our society if they are prevented from living in affordable and comfortable housing.

Mr. President, in these troubled economic times, it would be very shortsighted indeed to shut our retirees out of housing. The most important gift America's younger generation can offer to our retirees is the ability to enjoy their golden years viably, in economic security, and in a comfortable home.

This is why, Mr. President, this project to create a low-income mobile home park for Seniors is so critical. For retirees, who have decided to come to Las Vegas to retire or who have been lifelong Nevada residents, this legislation to establish a mobile home park in southern Nevada cannot wait. I urge my colleagues to give their full support to this important legislation.●

---

By Mr. WARNER (for himself, Mr. CHAFEE, Mr. TRIBLE, Mr. MURKOWSKI, Mr. COHEN, Mr. MITCHELL, Mr. STEVENS, and Mr. PELL):

S. 2128. A bill to amend the Internal Revenue Code of 1986 to permit tax-free sales of diesel fuel for use by fishery vessels; to the Committee on Finance.

TAX EXEMPTION FOR DIESEL FUEL USED BY FISHERY VESSELS

● Mr. WARNER. Mr. President, today I am introducing legislation cosponsored by Senators TRIBLE, MURKOWSKI, COHEN, MITCHELL, STEVENS, CHAFEE, and PELL to make several important changes in the procedure for collecting diesel enacted Budget Reconciliation Act.

The Reconciliation Act contained a revenue provision that would change the collection point for the diesel fuel excise tax on Federal highway users from retailers to wholesalers. Clearly, this new tax collection procedure, which is scheduled to take effect April 1, was intended to strengthen enforcement and collection of the diesel tax from those who use our Nation's highways. I am sure we all agree that this is a worthy goal.

However, the unintended effect of this provision will be to force virtually all diesel consumers to pay the tax up front on their fuel. Only thereafter can those who can demonstrate that they did not use the fuel on a federally funded highway be eligible to apply for a refund from the Internal Revenue Service.

Before this act passed, a retailer, who was collecting the tax, was presumed to be able to distinguish between sales of fuel to highway and nonhighway users. Under the new procedure a diesel wholesaler will have no idea who the end user of the fuel will be and will thus have to charge the tax on all fuel sales.

The Reconciliation Act does provide for several exceptions: commercial aviation, home heating oil, State and local governments, and railroads are excepted. These exceptions are provided because it was generally believed that those categories of users could be easily identified as nonhighway users at the wholesale level. Because the same generally holds true for the fishery industry, my bill would simply add them to the list of exceptions already enacted into law.

If there is one group that clearly is not purchasing fuel for highway use it is the fishery industry, yet they are nonetheless "netted" under the law.

Other bills which have been introduced in recent weeks, seek to relieve the burden on other nonhighway users, such as farmers, who will have to forfeit the tax up front and then apply later for a refund. My bill merely seeks to ensure that the fishery industry receives adequate and fair consideration.

I know there is currently a great deal of congressional concern over the effects of this new tax collection pro-

cedure on industries which are particularly sensitive to the price of diesel fuel. However, I am skeptical that Congress can act in time to avoid the April 1 effective date. Up front diesel fuel costs will rise by approximately 20 percent as fishermen have to pay for taxed fuel and then wait, in many cases up to a year, for their refund from the IRS. There is no doubt that this new procedure will impose a severe cash drain in fishery vessel operators.

As my colleagues know, these small businessmen operate on a narrow margin. They cannot affort to lend the Federal Government thousands of dollars interest free, which are needed to make mortgage and insurance payments on vessels, meet payrolls for crew members, and repair boats and replace gear. In fact, in many fisheries, fuel cost is the most significant cost associated with vessel operations. Fuel purchases accounts for over 27 percent of operating costs for vessel operators in the southeastern United States.

Further, this change in tax collection procedures will impose an onerous recordkeeping burden on these small businessmen, who are least able to comply with it. Fishery vessel operators and owners will have to maintain meticulous records of all fuel purchases for IRS inspection in order to obtain refunds of a tax they were never meant to pay.

Although I believe an unfair tax procedure should be corrected even when that correction may cost the Federal Government some revenue, I believe equally as strongly that we must continue our efforts to reduce the Federal budget deficit. Therefore, I intend to have the Joint Committee on Taxation prepare a revenue estimate on this legislation.

I appreciate the improved tax enforcement intentions behind the original legislation contained in last year's Reconciliation Act, to elimate documented as well-known abuses. However, the application of this new tax collection procedure across the board to all users of diesel fuel, no matter how unrelated their activities are to use of the Nation's highways, is a prime case of an over reaction to correct a specific problem. It seems ludicrous to think that a fisherman working, way, several miles off the coast of the Commonwealth of Virginia will be burning fuel that is taxed, even if temporarily, because the IRS believes it might just possibly be used on the highway.

I hope my colleagues will join with me in cosponsoring this legislation to free fishery vessel owners and operators from this bureaucratic nightmare that will descend upon them on, ironically, April Fool's Day. I ask unanimous consent that the full text of the bill and an accompanying letter from the Alaska Factory Trawlers Association in support of this bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2128

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. TAX EXEMPTION FOR DIESEL FUEL USED BY FISHERY VESSELS.

(a) IN GENERAL.—Section 4093 of the Internal Revenue Code of 1986, as added by section 10502 of the Revenue Act of 1987, is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) FISHERY USE.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on the sale of any taxable fuel for use by a fishery vessel. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to the sale of any taxable fuel for resale for use by a fishery vessel.

"(2) FISHERY VESSEL.—The term 'fishery vessel' means a fish harvesting vessel, a fish tender vessel, or a fish processing vessel.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987.

---

ALASKA FACTORY
TRAWLER ASSOCIATION,
*Seattle, WA, February 22, 1988.*

Hon. JOHN WARNER,
*U.S. Senator, Senate Russell Office Building, Washington, DC.*

DEAR SENATOR WARNER: The Alaska Factory Trawler Association (AFTA), the trade association which represents the factory trawler fleet operating in the North Pacific groundfish fishery, seeks your assistance in a matter of significant economic importance to us and to other segments of the fishing industry—establishing an up-front exemption for fishing vessels from the 15.1 cent per gallon federal highway excise tax on diesel fuels.

This federal excise tax, passed December 22, 1987, was designed to tax highway users. However, current exemptions from diesel fuel taxes for off-highway users, including fishing vessels, has been eliminated. Loss of this up-front exemption means that fishermen will be required to pay the tax up front, then apply for a refund on a quarterly basis. This needlessly increases the recordkeeping and paperwork for both the fishermen and the government, and costs the fishermen significantly due to the loss of the time value of the money deposited with the government.

While this is a problem for all fishermen, the problem becomes particularly acute for the factory trawler operators. These large American owned and operated vessels participate in high volume, low margin fisheries and must compete in the world market against foreign producers who enjoy lower operating costs. As illustrated in the attached fact sheet, factory trawler operators can expect to have between $22,500 and $67,950 awaiting rebate at any time. This amount increases if rebates aren't made in a prompt manner.

At a time when prices for our products have declined and other operating costs have increased, many operators cannot afford this additional drain to their cash flow.

One of the objectives of doing away with the exemption was to deter tax-evasion schemes, in which fuel which is ostensibly purchased for off-highway use is diverted to use in a highway vehicle. Such a scheme is only a remote possibility for an operator of a vessel fishing in the Gulf of Alaska or the Bering Sea, and a burden of the magnitude imposed by this law is unjustified. If deterring such schemes is the goal of Congress, a provision applying the exemption only to fuel pumped directly into the fishing vessel would be appropriate.

You can help with this issue by supporting a bill, such as the one enclosed, which amends the Internal Revenue Code by providing fishing vessels, fish processing vessels, and tender vessels an up-front exemption from this highway tax.

The members of AFTA would like to thank you for the assistance you have given us in the past, and hope that you will work with us to resolve the problem we are facing today.

Sincerely,

WILLIAM R. ORR,
*Director, Government Affairs.*

---

FACTORY TRAWLER FUEL CONSUMPTION

An informal survey was conducted among factory trawler operators to determine fuel consumption patterns. The results, which are rough averages, are categorized into three categories: vessels less than 200 feet, vessels 200-250 feet, and vessels greater than 250 feet. The number of vessels include vessels which will enter the fishery this year.

Factory Trawlers less than 200 feet:
Number of vessels: 16;
Fuel carrying capacity: 75,000-100,000 gallons;
Daily fuel consumption: 2,000 gallons/day;
Quarterly fuel consumption: 150,000 gallons;
Quarterly tax @ $.151/gal: $22,500.

Factory Trawlers between 200 and 250 feet:
Number of vessels: 14;
Fuel carrying capacity: 150,000 gallons;
Daily fuel consumption: 2,600 gallons/day;
Quarterly fuel consumption: 200,000 gallons;
Quarterly tax @ $.151/gal: $30,000.

Factory Trawlers larger than 250 feet:
Number of vessels: 10;
Fuel carrying capacity: 200,000 to 325,000 gallons;
Daily fuel consumption: 6,000 gallons/day;
Quarterly fuel consumption: 450,000 gallons;
Quarterly tax @ $.151/gal: $67,950.

Nearly all of the fuel is taken at Alaskan ports. The average price of fuel (#2 diesel) purchased in Alaska is $.75/gallon. (A quarter is figured as 75 days of operation.)

PROPOSED AMENDMENT

To amend the Internal Revenue Code of 1986 to permit tax-free sales of diesel fuel for use by fishery vessels.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*

SECTION 1. TAX EXEMPTION FOR DIESEL FUEL USED BY FISHERY VESSELS.

(a) IN GENERAL.—Section 4093 of the Internal Revenue Code of 1986, as added by section 10502 of the Revenue Act of 1987, is amended by redesignating subsections (d) and (e) as (e) and (f), respectively, and by

inserting after subsection (c) the following new subsection:

"(d) FISHERY USE.—Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on the sale of any taxable fuel pumped directly onto a fishery vessel. For the purposes of this subsection, the term 'fishery vessel' means a fish harvesting vessel, a fish tender, or a fish processing vessel.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987.●

● Mr. CHAFEE. Mr. President, together with Senator WARNER, I am introducing legislation to correct a problem created by a provision in the recently enacted budget reconciliation law.

Currently, fishermen are exempt from paying the 15-cent-per-gallon excise tax on diesel fuel, because this tax is collected for the highway trust fund for use on highways. However, as a result of this change in law, fishermen will now be forced to pay this tax at time of purchase, and apply to the Internal Revenue Service for a refund.

This is government intrusion at its worst. It is as if the Government was purposely trying to make life more difficult for fishermen by collecting a tax from them which they don't even owe, and withholding it for a year. For fishermen this creates a particularly onerous burden, because fishing crews normally divide up the profits from a fishing trip. If a portion of these profits were withheld for a year, it would be difficult, if not impossible, to ensure that each fisherman receives his fair share when the refund check comes in.

I want to make it clear that I agree with the intent of the Budget Reconciliation Act, which is to collect more efficiently the diesel excise tax from highway users. Since fishermen clearly do not fall into this category, it is unfair to burden them with the excessive recordkeeping necessary to comply with this act.

A fishermen's cooperative in Rhode Island informed me that it would cost over $320,000 a year for this relatively small club to pay the diesel tax at the pump.

For many fishing vessels, fuel cost is the most significant cost associated with fishing. We should not be adding to this cost at a time when our fishermen are struggling to cope with dwindling fish stocks and tough foreign competition.

I urge my colleagues to join with me in supporting this legislation to exempt fishermen from paying an unfair and onerous tax.●

---

By Mr. BAUCUS (for himself, Mr. BOREN, Mr. BURDICK, Mr. CONRAD, Mr. DASCHLE, Mr. DOMENICI, Mr. FORD, Mr. FOWLER, Mr. GARN, Mr. GRAMM, Mr. GRASSLEY, Mr. HARKIN, Mr. HECHT, Mr. HELMS, Mr. KARNES, Mr. MCCLURE, Mr. NICKLES, Mr. PRESSLER, Mr. SIMPSON, and Mr. MCCONNELL):

S. 2129. A bill to amend the Internal Revenue Code of 1986 to repeal the application of the uniform capitalization rules with respect to animals produced in a farming business; to the Committee on Finance.

REPEAL OF THE "HEIFER" TAX

● Mr. BAUCUS. Mr. President, today Senators WALLOP, MELCHER, and I, along with Senators BOREN, BURDICK, CONRAD, DASCHLE, DOMENICI, FORD, FOWLER, GARN, GRAMM, GRASSLEY, HARKIN, HECHT, HELMS, KARNES, MCCLURE, NICKLES, PRESSLER, and SIMPSON are introducing legislation to repeal the so-called heifer tax that was adopted in the 1986 Tax Reform Act. I hope that this legislation can be enacted quickly, so that our agricultural producers will be relieved of the unfair administrative burdens that the heifer tax imposes.

BACKGROUND

Up until 1986, agricultural producers could immediately deduct the preproductive expenses of managing their breeding herds (for example, feed, veterinary costs, rent, depreciation, taxes), then receive favorable capital gains treatment of the proceeds when the breeding stock was sold. In some cases, this may have created a deferral/conversion opportunity that attracted outside tax-shelter investors. For this reason, some agricultural groups proposed revising the tax treatment of preproductive expenses. For example, the American Farm Bureau Federation proposed that "all gains on the sale of breeding, draft, and sporting livestock and dairy animals * * * be treated as ordinary income, not capital gains."

The President's tax reform proposal went even further, by both requiring that preproductive period expenses be capitalized rather than deducted immediately (if the preproductive period exceeded 2 years) and denying capital gains treatment to proceeds from the sale of breeding stock and all other "section 1231 assets."

Eventually, the House version of the tax bill contained a similar proposal. The Senate version of the bill did not, but the House provision was included in the conference report, as code section 263A. This provision changes the accounting rules for preproductive expenses. It requires agricultural producers to use one of two options. First, they can capitalize their preproductive expenses rather than deduct them immediately. Alternatively, they can deduct them immediately, but only if they recapture the expenses when each animal is sold and use a less favorable depreciation method for all of their agricultural machinery and equipment.

PROBLEMS WITH THE HEIFER TAX

Section 263A creates an administrative nightmare. Agricultural producers are required to keep track of their preproductive expenses animal-by-animal. This is simply impractical. Agricultural producers are having a hard enough time making ends meet, without having to keep up with this additional paperwork.

In addition, section 263A increases agricultural producers' taxes substantially: the National Cattlemen's Association estimates that it may increase taxes by $50 to $100 for each animal placed back in the herd.

What's more, it's unnecessary; when originally proposed in the House version of the Tax Reform Act, section 263A was aimed at tax shelter operations; however, many other provisions that were eventually adopted deal effectively with the agricultural tax shelter problem.

Our legislation would make the preproductive period expense rules inapplicable to farmers who use the cash method of accounting. They could, therefore, continue to deduct preproductive expenses as they are incurred. This would result in a revenue loss of between $100–$200 million a year. Given the need to keep reducing the Federal budget deficit, I understand that this revenue loss must be offset by revenue-raising provisions, and I am working with agricultural groups to develop an appropriate offset proposal.

CONCLUSION

Mr. President, I supported the Tax Reform Act. Taking everything into account, it makes the system more fair. In my own State of Montana, it reduces individual Federal income taxes by 10 percent. But, at the same time, it contains mistakes. And section 263A is one of the most glaring. I hope that we can improve the Tax Reform Act by repealing this ill-conceived heifer tax and I urge my colleagues to join me, Senator WALLOP, Senator MELCHER, and the others who are cosponsoring our bill, to enact repeal legislation as quickly as possible.

I ask unanimous consent that a copy of the bill, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2129

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

SECTION 1. TREATMENT OF ANIMALS PRODUCED IN FARMING BUSINESS.

(a) IN GENERAL.—Subparagraph (A) of section 263A(d)(1) of the Internal Revenue Code of 1986 (relating to exception for farming businesses) is amended to read as follows:

"(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

"(i) Any animal.

"(ii) Any plant which has a reproductive period of 2 years or less."

(b) TECHNICAL AMENDMENTS.—

(1) The heading of paragraph (1) of section 263A(d) of such Code is amended to read as follows:

"(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—".

(2) Subsections (d)(3) and (e) of section 263A of such Code are each amended by striking out "or animal" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986.●

● Mr. WALLOP. Mr. President, I rise today with the Senators from Montana, Mr. BAUCUS and Mr. MELCHER, and 18 other Senate colleagues to repeal a provision in the Tax Reform Act of 1986 which is now commonly referred to as the "Heifer Tax."

The "Heifer Tax" is shorthand for Internal Revenue Code Section 263A: The burdensome requirement that forces agricultural producers to apply the uniform cost capitalization rules to animals and plants with preproductive periods in excess of 2 years. For livestock producers, this means the preproductive period begins when the animal is conceived and ends when the animal is ready for its intended use. For cattle, this period spans two gestation periods. Producers must now capitalize, rather than expense, the direct and indirect costs of production such as feed, vet bills, rent, depreciation, interest and taxes. The capitalized costs are then depreciated over 5 years.

The enactment of the Heifer Tax was a mistake and has created an administrative and bookkeeping nightmare for my Wyoming cattle producers. The practical problems with capitalization of preproductive costs may force the use of subjective cost estimates to prepare tax returns and determine the tax owed. The use of estimates, be they developed by the taxpayer or by the Government, is questionable tax policy and leaves the stockgrower vulnerable to the judgment of an IRS agent who may think he knows more about cattle production than does the stockman.

Mr. President, I wish to touch on some of the practical problems with the capitalization rules. Since the capitalization period begins at conception, and well before the sex of the animal is known, this means the cost of animals that will not remain in the herd, such as bull calves, will be capitalized for 9 months. Another problem is the allocation of costs between cow and unborn calf when preproductive periods overlap. This allocation is needed to determine the depreciation base for each animal. Another problem is that the recordkeeping may be for naught if the animal is not used as replacement breeding stock. Typically, only a small fraction of the herd is used as replacement breeding stock and this determination is made when the animal has reached breeding age, not when it is born.

The code does allow producers to make an election to continue deducting preproductive period costs as they are incurred, but not without a catch. The catch is that the producer must use straight line depreciation over longer lives on farm assets acquired after the election is made and then must recapture as ordinary income, when the animal is sold, all the costs that would have been capitalized had the election not been made. The difference in depreciation methods could wipe out the benefits of expensing preproductive costs and the producer will still need to properly account for preproductive costs in order to determine the amount of recapture.

The preproductive cost capitalization rules will substantially raise a producers tax bill. The National Cattlemen's Association expects that cattlemen will see a $50 to $100 increase in their tax bills for each animal placed back in the herd.

In 1987, Wyoming stockgrowers experienced what I like to call a "one-hundred year season." This is a once-in-a-life-time combination of good grass, plenty of water, good prices, and a mild winter. So the increase in taxes hits at a time when some Wyoming stockgrowers made money for the first time in many years and are able to begin the long climb out of a deep hole.

Mr. President, our legislation exempts agricultural producers from the burdensome and costly capitalization requirements of code section 263A and will allow them to continue to deduct preproductive costs as they are incurred. I urge my colleagues to cosponsor this legislation and send a signal to the agricultural community that Congress is willing to correct its mistakes.●

● Mr. DASCHLE. Mr. President, I also rise as an original cosponsor of this legislation. I believe that the approach taken in this bill is a good one. It allows farmers who use the cash method of accounting and therefore do not normally keep track of expenses for each of their farm animals on an individual basis to continue deducting preproductive expenses in the year in which they are incurred.

While the notion of uniform capitalization of expenses across the board for all taxpayers is an intriguing concept, we have seen that for some groups of taxpayers, including farmers, it is an administrative nightmare come true. It is a deceptively simple idea that is nearly impossible on taxpayers who can least afford it.

I plan to assist my colleagues in doing all we can to pass the legislation we introduce today, but I would also like to offer a ray of hope for these farmers in the meantime. I have been in contact with officials at the Treasury Department who are responsible for issuing implementing guidelines under the new uniform capitalization rules. Some farmers and C.P.A.'s from my State have spoken directly to individuals at the Treasury about these new requirements. We understand that guidelines are forthcoming from Treasury that would provide a safe harbor for farmers.

Under these proposed guidelines, farmers would be permitted to choose as one option a standard amount to expense per animal. If they decide upon this course, they would not have to keep track of their expenses for each animal. It is perhaps an imperfect solution, but would at least provide an avenue for avoiding the administrative quagmire of the uniform capitalization provisions.

Thus, while I have great hopes for passage of the bill we are introducing today and encourage my colleagues in the Senate to lend their support, I would also like to take this opportunity to urge the Treasury to act quickly in issuing the guidelines that I have just mentioned.●

---

By Mr. WILSON:

S. 2130. A bill to provide that the Consumer Product Safety Commission amend its regulations regarding lawn darts; to the Committee on Commerce, Science, and Transportation.

REGULATIONS RELATING TO LAWN DARTS

● Mr. WILSON. Mr. President, today I am introducing legislation to ban the sale of lawn darts, a seemingly harmless toy which actually has caused serious injuries to scores of children, and is responsible for the death of a small child in Riverside, CA, a little less than a year ago.

In 1970, the Food and Drug Administration determined that "law darts and other similar sharp-pointed toys usually intended for outdoor use and having the potential for causing puncture wound injury, or other injury" should be banned. However, the FDA also declared that such darts not intended for children not be banned; rather, that their packaging be marked in such a way as to warn parents that their children should not use them.

Mr. President, this warning system has not worked. I know that it has not worked in part because a parent of the child killed last year in Riverside, a constituent of mine named David Snow, has become a one-man crusade for the banning of lawn darts. David Snow is right.

The staff of the Consumer Products Safety Commission [CPSC] estimates that at least 500,000 law dart sets are sold annually. Others estimate that upwards of 1.5 million sets are sold each year. At least 10 percent of the sets are sold in the same package as

badminton sets and other lawn games. Approximately 6,100 people were treated in U.S. hospital emergency rooms for injuries from lawn darts between January, 1978 and December, 1986. Over 80 percent of the victims were children under the age of 15; over 50 percent of the victims were under the age of 10. At least three children have died after being struck by a lawn dart.

The CPSC, however, still does not recognize the dangers to children inherent in lawn darts. Yesterday, the Commission voted against banning lawn darts. In addition, it even went so far as to ban its own staff from bringing civil suits to invoke penalties against lawn dart distributors who violate CPSC regulations. Instead, it made mandatory five provisos: that the front panel warning label on a lawn dart package be made more conspicuous and readable that a warning label be placed on one fin of each lawn dart in the set; that there be a warning against modifying a lawn dart; that each shipment of lawn darts to retailers include information on how to display lawn darts; and that lawn darts should not be packaged with other lawn games.

Yet, Mr. President, these are only warnings. In the last 6 months, CPSC staff visited 31 retail stores selling lawn darts and found that packages in half were in violation of these standards, and 12 of those in violation are part of three major retail chains. Seventeen of eighteen distributors were found to be violating label standards, and some importers have said that they may implement some of these five standards if they become mandatory.

It is clear that to ensure that all distributors and importers comply with these five standards would be impossible, unless the CPSC spends an immense amount of Federal funds to do so—funds that it does not have. It is further evident that lawn darts is such an easy game to play that children will continue to play it if they have the chance to do so. Parents can not supervise their children all the time. Therefore, unless lawn darts are banned, we will continue to see small children being injured, and possibly killed.

Therefore, Mr. President, I am introducing legislation to ban the sale of lawn darts. The language in this bill is identical to language which Senator GORE and I have agreed upon and is present in S. 1882, the Consumer Products Safety Commission reauthorization bill.

Unfortunately, this legislation has been stalled in the Committee on Commerce, Science, and Transportation for reasons unrelated to the proposed ban on lawn darts. I ask permission to have printed in the RECORD, a copy of the legislation, and a letter to President Reagan from my constituent, David Snow, regarding the lawn dart problem. In order to prevent more children from being injured, I urge my colleagues to cosponsor this important legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2130

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Consumer Product Safety Commission shall amend its regulations to revoke exemption regarding lawn darts and other similar sharp-pointed toys contained in section 1500.86(a)(3) of title 16, Code of Federal Regulations, unless the Commission finds that such products do not have the potential for causing puncture wound injury.

---

AUGUST 28, 1987.

The PRESIDENT OF THE UNITED STATES,
*The White House,*
*Washington, DC.*

DEAR MR. PRESIDENT: On April 5, 1987, my seven year old daughter Michele was struck in the head by a toy lawn dart and died as a result of her injury. Michele was playing with her dolls when the dart tossed by another child sailed over a fence and hit her.

Since her death I have learned that lawn darts exert 23,000 pounds of pressure per square inch when dropped from 15 feet. Lawn darts severely injure almost one thousand children a year requiring treatment in the nations hospital emergency rooms. These injuries include brain damage, paralysis, lost eyes, hearing loss, lacerations etc. This carnage started in the mid 1950's when lawn darts were first marketed. In 1970, the government banned lawn darts in response to the injuries up to that point. However, the manufactures of lawn darts sued for relief. It resulted in an exemption of lawn darts as a banned toy if a cautionary statement was placed on the lawn dart package. The court felt that this would solve the problem with the darts. It did not.

On June 4, 1987, I testified at the reauthorization hearing of the Consumer Product Safety Commission, chaired by Representative James Florio. My Testimony related to the violations of federal regulations by marketers of lawn darts. These violations factored in the death of my child. The CPSC followed up on my testimony and discovered in a survey of 21 lawn dart marketers that all 21 were in violation of labeling standards. They also found that a substantial number of retailers were in violation as to the required location of sale of lawn darts. These violations have continued unchecked for a number of years and consumers were denied their right to vital information.

The CPSC has been dangerously negligent. Chairman Terrence Scanlon's insistencies on a policy of voluntary compliance is misguided. This policy is unrealistic. It is causing the needless injury and death of children and adults. Voluntary compliance should not be substituted where mandatory enforcement by the commission is clearly called for. The CPSC is nothing short of a disgrace to the nation and your administration. I strongly believe that Congressman James Florio is correct when he stated that; "This agency is not doing it's job and as a result hundreds of consumers are being killed or seriously injured because of unsafe products on the market unregulated." You stated Mr. President, in your proclamation of National Consumers Week in April 1985, that; "Consumers have the right to healthful and safe products and the right to be heard when products do not meet standards." O.K., I want to be heard.

I have been perplexed at the Commissions failure to act on any safety issue since 1984, Not one safety rule has been promulgated under Terry Scanlon's leadership. I realize that before any positive corrective action of lawn darts or other dangerous products can occur, changes must be made within the CPSC. That is, we must fix the solution before we can fix the problem. I have spoken with many individuals on both the Senate and House consumer committees and CPSC staff. A clear consensus is evident. Mr. Scanlon lacks the ability to lead and has rendered the CPSC useless. The Commissions staff is demoralized and has no sense of direction.

On August 21, 1987, Chairman Scanlon further destroyed the CPSC. He removed the Commissions strongest advocate of product safety, Mr. David Schmeltzer Esq. as Director of Compliance and Enforcement. Mr. Schmeltzer has served the CPSC in an exemplary manner as the Compliance Director under four administrations and three former CPSC chairpersons. This change was made by Mr. Scanlon without the consent or approval of Commissioners Anne Graham or Carol Dawson. Mr. Schmeltzer was replaced by an individual who does not have a law degree. How is this person going to perform the duties of Enforcement and Compliance as a judicator without a trained knowledge of law. I would request that Mr. Schmeltzer be returned to his former position so we can get on with the serious business of protecting the public. Mr. Schmeltzer disagreed with Chairman Scanlon's ardent policy of voluntary compliance, believing that compulsory enforcement is necessary when companies fail to cooperate with safety regulations and issues. Mr. Schmeltzer was trying to function with one hand tied behind his back like the commissioners and staff of the CPSC must do when Chairman Scanlon sabotages any productive effort towards consumer protection.

Enough is Enough! I am requesting immediate intervention by you Mr. President. I am asking for the removal of Terrence Scanlon as Chairman of the CPSC.

Please investigate. You will find my assessment of the situation correct. Please share with me my desire to protect the sanctity of life above all other considerations in memory of my precious little girl.

Attached is material for your review and consideration.

Sincerely,

DAVID A. SNOW.

---

By Mr. D'AMATO:

S. 2131. A bill to amend the Immigration and Nationality Act to provide lawful temporary resident status for certain aliens based upon petitions submitted to the Attorney General on behalf of such aliens by sponsoring employers and labor unions, and for other purposes; to the Committee on the Judiciary.

S. 2132. A bill to authorize the original enlistment of certain aliens in the

Armed Forces of the United States and the militias of the several States, to provide temporary and permanent resident status to such enlisted members, and for other purposes; to the Committee on the Judiciary.

S. 2133. A bill to provide for the legalization of certain aliens and to provide for units of assessment to determine the qualification of aliens for such status; to the Committee on the Judiciary.

IMMIGRATION LEGISLATION

● Mr. D'AMATO. Mr. President, I rise today to introduce three bills, representing three ways of attacking the same problem: The very serious inequity in our present immigration system. These bills are identical to three being introduced in the other body by my distinguished friend, Congressman DIOGUARDI of New York.

Viewed another way, these bills are three potential gateways of opportunity—gateways open to those prospective Americans most likely, and best equipped, to make immediate and meaningful contributions as American citizens.

There is growing recognition in this body that the present immigration system, even with all the improvements made in the last Congress, discriminates against many who, ironically, are potentially among our most productive citizens. These are aliens, many already here under illegal circumstances, who are nonetheless equipped by language, custom, skills, and education to be a vital part of our country's economy and cultural fabric. The loss, Mr. President, is clearly ours, if we fail to find a way to open the gates.

That recognition is reflected in a bill recently reported out of the Judiciary Committee, S. 1611, by Senators KENNEDY and SIMPSON. Mr. President, I think that the compromise version of that bill approved by Judiciary on February 23 of this year is a good bill; I cosponsored the original when it was introduced last October. It is a step in the right direction—a big step—because it recognizes that would-be citizens from countries such as Poland, Ireland, and my own ancestral homeland of Italy have been left out, in fact discriminated against, by the recent changes in our laws.

But the step doesn't go far enough. The system proposed by the compromise is an improvement; why not apply it more broadly? Why not provide more fairness, more opportunity, to those most able to contribute in return?

I will only briefly describe the bills here. Each is designed to open a gateway only to those determined and able to enhance, rather than burden, a society from which they deserve a chance.

The first bill provides a number of temporary visas to persons both presently here and abroad, for a 5-year period, to those wishing to work, if a labor organization or employer petitions for a visa for such person. After 5 years, such individuals would be eligible to apply for permanent residence status.

The second bill provides for ultimate residence and citizenship to a limited number of persons through service in the U.S. Armed Forces or the militias of the several States. Such people would be granted legal status to serve; they would also have to apply simultaneously for permanent residence status. The enlistee would be required to serve a minimum of 3 years. Applicants from abroad would be ineligible for service in any militia, and would have to enlist in the regular Armed Forces.

The third bill I will describe in somewhat greater length, as it represents the broadest and most fundamental attempt at repairing the inequities left by previous immigration legislation. Essentially, if legalizes a small but significant number of aliens, primarily from countries like Ireland, Italy, and Poland, who entered the United States after January 1, 1982, and before October 1, 1988.

Not every illegal alien is legalized by this bill. Instead the applicant must meet the eligibility criteria established under the Kennedy-Simpson bill (S. 1611) based on the following point system:

Aliens successfully completing grade school through high school: 10 units; bachelor degree: 10 units; graduate degree: 5 units; vocational education: 10 or 20 units, as determined by the Secretary of Labor; aliens between the ages of 21 years and 35 years: 10 units; aliens between the ages of 36 years and 44 years: 5 units; skills (as determined by the Secretary of Labor) to be needed in the United States: 10 units; work experience related to skills where there is or where there will be a shortage of skilled individuals: 5 units or 10 units; for demonstrating an understanding of the English language and for the ability to communicate in English: 20 points.

A spouse or child shall be entitled to immigrant status if his spouse or parent qualifies under this point system. The minimum number of points necessary to qualify for legalization is 80 points. One hundred thousand visas shall be made available under this system each year for 5 years. Those who attain a score of 80 or more units will be eligible first. Those who attain a score of 40 or more units will be eligible for any remaining visas through a lottery system.

Mr. President, I hope this Congress will open its minds, its hearts, and America's doors to these people. They seek to be Americans for the same reasons our own forebears did: To live in freedom, and make their contribution to the American dream. The legislation is intended to make that opportunity available to those likely to make good use of it. Their eagerness to come here is there best evidence we can offer the world of the continuing vitality of our way of life. They need us, and we need them.●

---

By Mr. D'AMATO (for himself, Mr. HELMS, Mr. KERRY, Mr. KENNEDY, Mr. DURENBERGER, Mr. GRAHAM, Mr. HEFLIN, Mr. DOLE, Mr. SPECTER, Mr. THURMOND, Mr. MURKOWSKI, Mr. CRANSTON, Mr. MCCLURE, Mr. LEAHY, Mr. GARN, Mr. GRASSLEY, Mr. SYMMS, Mr. SIMPSON, Mr. TRIBLE, Mr. DOMENICI, Mr. COCHRAN, Mr. PRESSLER, and Mr. WILSON):

S. 2134. A bill to impose sanctions against the Republic of Panama; to the Committee on Foreign Relations.

DEMOCRACY IN PANAMA ACT

Mr. D'AMATO. Mr. President, I rise to offer legislation with Senators HELMS, KERRY, KENNEDY, DURENBERGER, GRAHAM, CRANSTON, HEFLIN, DOLE, THURMOND, SPECTER, MURKOWSKI, DECONCINI, MCCLURE, SYMMS, LEAHY, GARN, GRASSLEY, DOMENICI, SIMPSON, TRIBLE, PRESSLEY, and COCHRAN, to impose a total trade embargo on Panama.

This legislation would:

Prohibit all imports from Panama;

Prohibit all United States exports to Panama;

Revoke air travel between our two nations, including foreign flights which land at Panama; and

Prohibit depository institutions from transferring any funds to any bank or financial institution located in Panama.

This legislation does not affect the Panama Canal Zone, the export of medicine and humanitarian assistance to Panama, and would provide for the immediate termination of the embargo upon the departure of General Noriega.

Many in the administration and some here in the Senate would prefer to be cautious on this issue. Mr. President, a cautious U.S. policy has done more to keep Noriega in power, than help get him out of power. These creatures of caution would have us wait.

Wait for what?

Wait for Noriega to consolidate his power? Wait for him to find President Delvalle? Wait for more Panamanians to be beaten, imprisoned, or perhaps murdered?

Mr. President, let us not confuse caution with inaction.

Recently, Senators KENNEDY and DURENBERGER introduced a resolution expressing support for President Eric Delvalle's struggle against Gen. Manuel Noriega.

Well, Mr. President, let us back up that expression of support. Let us

heed the call of President Delvalle's and impose a complete trade embargo.

Mr. President, earlier this week, I received a copy of a communication from President Delvalle of Panama to the United States Ambassador to Panama, Author Davis. I would like to share that message with my colleagues, in which he states:

Other economic pressures including a trade embargo should be implemented immediately to help the people of Panama to get rid of the Narco-Military Communist dictatorship of Noriega.

Delvalle does not command troops, but we can demonstrate to General Noriega that Delvalle still has power, economic power, against which General Noriega cannot stand for long.

Are we only willing to do battle against drug trafficking when it is easy?

I understand the reluctance to impose a trade embargo. Many believe that such sanctions are ineffective. Mr. President, in the case of Panama, such action would be the most effective tool we have right now.

Panama relies heavily upon the special relationship with the United States for its economic well-being. The United States is Panama's largest buyer of goods; the United States imports nearly 60 percent of Panama's exports. The United States is also Panama's largest provider of goods, accounting for nearly 30 percent of Panama's imports. The immediate and dramatic impact of a U.S. trade embargo would be devastating.

Of course, such a step will cause economic suffering to innocent Panamanians. But President Delvalle and Ambassador Sosa have consistently indicated that this is a sacrifice their countrymen are willing to make for a chance at democracy.

Mr. President, if we do nothing, if we just sit on our hands, at the most crucial period in Panama's history, then we will be hurting the people of Panama more than economic sanctions ever could.

In 1986, the last year in which we have figures, Panama exported to the United States $412 million in goods. This figure has increased from $289 million in 1982. Most of Panama's exports are agricultural goods, such as fruits, coffee, sugar, as well as various seafoods. These markets cannot be replaced quickly or easily.

This legislation will also prohibit the transfer of funds from United States banks to Panama. If we go after Panama's banking, we go after Panama's jugular.

Banking has far surpassed the Panama Canal as Panama's most lucrative business. Thanks mostly to the use of United States currency, liberal disclosure and accounting laws, and billions in laundered funds, Panama has more banks per capita than any other country.

This body, however, cannot help Panama by itself. Mr. President, I hope the administration will quickly realize the urgency of this move and enact this embargo immediately without the need for legislation. This would clearly demonstrate to the people of Panama our Nation's full and undivided support.

The U.S. Government must act quickly. Any equivocation, any vacillation, any hestitation, will be viewed by General Noriega and his allies as a positive signal. As long as Noriega perceives that U.S. policy is in a state of flux, the pressure against him is minimized.

We are in a war, Mr. President. This is a battle for our youth and the very fiber of society. If we allow allied nations to facilitate the trafficking of drugs into our cities, how can we even dream about fighting the drug war against the likes of the Medellin Cartel and Fidel Castro.

I once said that General Noriega didn't amount to a pimple on the behind of an elephant. In the sum total of drugs he allowed to be shipped and the dollars he allowed to be laundered through Panama, he has been strictly minor league. But his close relationship with our Government over the past 20 years has been significant—and highly visible—foreign policy mistake. Drug traffickers around the world can only have been encouraged by this cozy relationship.

If we learn anything from our misadventures in Panama, I hope it is that we cannot countenance illegal activities, particularly drug trafficking, from friendly governments—even for national security reasons.

As we have seen, Mr. President, such policy can lead to a much larger threat to our national security.

We have an opportunity to act on the side of the Panamanian people. When this legislation is introduced, I strongly urge my colleagues to join me as sponsors of this important legislation.

I ask unanimous consent that the bill be printed in the RECORD at the conclusion of my remarks.

Mr. President, I ask unanimous consent that Senator WILSON be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, we reach a time in our Nation's history when we can talk about yearning and working for democracy. Here we have an opportunity to demonstrate that we are willing to take certain risks for that action, that we are willing to back it up with more than rhetoric.

We talk about the war on drugs. That war has been little more than lip service to date. Now we have an opportunity to confront the narco-terrorists, and if we fail to take on this challenge here in Panama, then who will ever believe that we are serious? Why should the drug lords in Colombia then recognize that we are serious? Why should the people in Bolivia believe that we are serious? Why should our neighbors in Mexico believe that we are committed to undertaking a real effort, a meaningful effort? Here is an opportunity for us to begin that war in a most meaningful way.

I yield the floor, Mr. President, to the senior Senator and my colleague from Alabama. I commend him for his support in this effort.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2134

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. FINDINGS.

The Congress finds that democracy has been suspended in the Republic of Panama, and that the situation constitutes a threat to the national security, foreign policy, and economy of the United States.

The Congress further finds that the absence of democracy in Panama has created an emergency in the international relations of the United States and Republic of Panama within the meaning of the General Agreement on Tariffs and Trade Article XXI(b)(iii).

Finally, the Congress finds that the emergency in international relations between the United States and the Republic of Panama requires that the United States protect its essential security interests through the application of certain economic sanctions until such time as democracy has been restored in the Republic of Panama.

SEC. 2. TRADE SANCTIONS.

(a) IN GENERAL.—After the date of enactment of this Act—

(1) no product of the Republic of Panama may be imported into the United States, and

(2) no goods or technology subject to the jurisdiction of the United States may be exported to the Republic of Panama, except for medicine and humanitarian assistance.

(b) ADMINISTRATION.—The prohibition provided under subsection (a)(2) shall be administered under the Export Administration Act of 1979.

(c) PRODUCTS OF THE REPUBLIC OF PANAMA.—For purposes of this section, the term "product of the Republic of Panama" means any article grown, produced, or manufactured (in whole or in part) in the Republic of Panama.

SEC. 3. AVIATION SANCTIONS.

(a) IN GENERAL.—

(1) On the date of the enactment of this Act, the President shall notify the Government of the Republic of Panama that the President will, within 10 days, order the revocation of the rights of any air carrier to provide service pursuant to any aviation agreement entered into by the Government of the United States and the Government of the Republic of Panama.

(2) By no later than the date that is 10 days after the date of enactment of this Act, the President shall direct the Secretary of Transportation to—

(A) revoke the right of any air carrier to provide service pursuant to any aviation agreement entered into by the Government

of the United States and the Government of the Republic of Panama.

(B) refuse to permit or to designate any United States air carrier to provide service between the United States and the Republic of Panama pursuant to such an aviation agreement.

(C) prohibit the landing in the United States of—

(i) any aircraft of a foreign air carrier owned, directly or indirectly, by the Government of the Republic of Panama, or by nationals of the Republic of Panama, or

(ii) any aircraft of a foreign air carrier that has taken off from the Republic of Panama at any time during the preceding 48 hours, and

(D) prohibit the takeoff and landing in Panama of any aircraft by any air carrier owned or controlled, directly or indirectly, by any national of the United States or by any corporation or other entity organized under the laws of the United States or any State.

(b) The Secretary of Transportation may provide for such exceptions from the prohibitions contained in subsection (a) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(c) For purposes of this section, the terms "aircraft", "air transportation", and "foreign air carrier" have the respective meanings given those terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

SEC. 4. PROHIBITION OF UNITED STATES BANK TRANSFERS.

Notwithstanding any other provision of law, no depository institution (as defined in section 19 of the Federal Reserve Act) may transfer any funds to any bank or financial institution located in, or organized under the laws of, the Republic of Panama.

SEC. 5. SUSPENSION OF SANCTIONS.

The economic sanctions enacted herein shall be suspended for any period during which the President certifies to the Congress that progress toward genuine democracy has been achieved in the Republic of Panama.

SEC. 6. PANAMA CANAL ZONE.

Nothing in this Act shall be deemed to effect the status of the 1977 Panama Canal Treaty or the agreements related thereto, or the 1977 Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, provided further that none of the prohibitions contained in the Act shall be interpreted to impede or restrict any existing statutory authority of the Panama Canal Commission (or the Department of Defense) to take such actions as may be necessary or desirable to carry out effectively and efficiently all aspects of its (their) mission(s) with respect to the Panama Canal, including, but not limited to, the procurement of supplies and services, official travel and the health and welfare of employees and their dependents.

Mr. HEFLIN. Mr. President, I am delighted to join Senator D'AMATO, and others as a joint sponsor of a bill that would inpose a complete trade embargo against Panama and would also prohibit banks in the United States from transferring funds to Panamanian banks or financial institutions. I believe that this legislation will send a strong, clear, and necessary message to General Noriega and his cohorts that the United States will not tolerate their dealings in drug trafficking, and their actions to undermine democracy.

While I am afraid that, if enacted, this trade embargo may result in some harm to the people of Panama as a whole, the great majority of whom share no responsibility for General Noriega's abuses, I am hopeful that action on this bill, or perhaps even the fact that it has been introduced and enjoys strong bipartisan support, will motivate the responsible citizens in Panama to actively oppose General Noriega, limit his power and take steps to end the abuses of the Panamanian Government. I am also hopeful that the people of Panama will now recognize that the United States will not sit by as their government officials serve as traffickers for drugs bound for the United States. Finally, I am hopeful that the people of Panama will recognize that Noriega and his henchmen are a liability not only to their relations with the United States but to themselves, to their happiness, their freedom, their democracy, and, indeed, their future.

Mr. President, when the U.S. Senate voted to ratify the Panama Canal Treaties in 1978 I had not yet been elected by the people of Alabama to serve in the Senate. However, it was no secret that I was opposed to the Panama Canal Treaties. I made that clear in my campaign for the U.S. Senate that year. I believed that the Panama Canal was too important to our national security and to the economic well-being of the people of America to risk to a corrupt, undependable or irresponsible Panamanian Government. In fact, I worked as a private citizen against ratification of the Panama Canal Treaties. My predecessor in the Senate, the Honorable Jim Allen, was the leader in fighting the ratification of those treaties.

Nevertheless, the treaties were ratified, and our Nation is now scheduled to give the Panama Canal to the Panamanian Government in 1999. As an advisor to General Noriega said on the television show, "Meet the Press," on this past Sunday:

> You have a commitment with Panama whereas on the 31st of December of 1999, the last American soldier will be leaving our country.

Thus, in just over 10 years, we are required to abandon the canal, for better or for worse, to the Government of Panama.

That prospect frightens me. At this juncture, I believe that going ahead with the treaties will be for the worse.

Furthermore, there is some evidence that General Noriega has established closer ties with Cuba and the Soviet Union, that he has sold high-technology equipment to the Cubans, that he has provided arms to the Sandinistas in Nicaragua and the leftist guerrillas in El Salvador. In light of these claims, I believe the United States should seriously consider rescinding the Panama Canal Treaties. We cannot afford to allow even the most remote possibility of Panama or the Panama Canal falling under the influence of the Soviet Union or Cuba.

Therefore, in the months to come, in an effort to address and salvage the situation with which we are now faced. The Senate should study all options that are available, including the rescission of the Panama Canal Treaties which are currently in existence. I believe it is our duty to serve and protect the interests of the people of the United States of America, and I will examine all possibilities and take every appropriate action in fulfilling this sworn responsibility.

There is no doubt that the Panama Canal is vital to the defense of our country and to our economic vitality and strength. It was build with the hard-earned dollars of the taxpayers of America, and has been defended by American soldiers. Now, and in the future, we must protect our rights and interests in Panama. We must protect our right of passage through the canal. We must protect our people in Panama. I am afraid that the instability and corruption which is so rampant in Panama today will not go away in just 10 short years—the time by which United States soliders are required by the treaty to leave the Canal Zone.

I fear that the Government of Panama is not strong enough to maintain the canal and defend it against threats which may arise. I fear the Government of Panama may even gravitate toward the Soviet Union. This situation needs to be reexamined in light of recent events, and as a nation we should take every appropriate action to preserve our interests in Panama.

Mr. HELMS. Mr. President, once again I am privileged to join with Senators D'AMATO and KERRY, and others, to try to assist the people of Panama in their struggle to oust General Manuel Antonio Noriega. During the past 2 years a broad bipartisan group of Senators have succeeded in passing four pieces of legislation regarding Panama.

Last August Senator D'AMATO and I offered legislation to cut off aid to Panama. The bill was incorporated into the continuing resolution and signed into law in December. Included were the cancellation of Panama's sugar quota and instructions to American representatives to vote against loans to Panama in multilateral institutions.

Since December the crisis in Panama has deepened.

Mr. President, in February the civilian head of Panama was deposed after he courageously exercised his constitutional right to remove Noriega as Com-

mander of the Panama Defense Forces. After being threatened with expulsion from the country, President Delvalle managed to escape, he is still in Panama, but Noriega cannot find him. Noriega meanwhile appointed his own hand-picked successor to President Delvalle.

President Delvalle and his government officials have begun economic warfare against Noriega. The Delvalle government ordered all Panamanian consulates to withhold all fees from shipping companies for registering ships in Panama. They have called for all funds, taxes, and fees owed to Panama to be placed in an escrow account.

The Delvalle government has received quick recognition from governments throughout the hemisphere. Only five countries now recognize Noriega, and three of them are Communist dictatorships.

Mr. President, more than a decade ago—on February 20, 1978—during Senate debate on the Panama Canal I said that the American people would be rightfully angered if they discovered that they had given away the Panama Canal to an international gangster. That is precisely what has happened.

Noriega is planning to take full control of the canal, and the American people know that the United States has major national interests in Panama—and that those interests are now at grave risk. The United States has two standing indictments against Noriega and his cronies. I have written to Attorney General Meese requesting that Noriega is extradited. Two days ago the administration refused to certify that Mr. Noriega's government was cooperating with the United States to halt drug trafficking and money laundering. That is good, but it is now time to take much stronger and much more effective measures.

I well remember the harsh actions taken by the State Department and many in the Senate against the heads of state of other nations who were much better friends of the United States than Noriega. Noriega is in fact, no friend at all of the United States. He much prefers the company of Fidel Castro and Mr. Ortega in Nicaragua. Noriega has not one redeeming quality, and the longer the Congress waits to move directly against Noriega, the more U.S. vital interests will be in danger.

Mr. President, the United States is not at war with the Republic of Panama or the Panamanian people. We were early supporters of Panamanian independence and will continue to support the legitimate aspirations of the Panamanian people. However, because of the suspension of democracy in Panama by General Noriega, and his narcotics assault on the United States, there exists today an emergency in our relations with Panama. With great reluctance, the United States feels that it has no option but to protect its essential security interest by means of a temporary series of economic sanctions on Panama.

The sanctions contained in this bill have one purpose: It is to convince General Noriega that he must relinquish power to the legitimate Government of Panama. Once that aim is achieved, the sanctions will be lifted.

Mr. President, Senators D'AMATO, KERRY, and I propose a total embargo of all products to and from Panama. The sanctions are in three parts, import prohibition, suspension of aviation landing rights, and a prohibition on United States bank transfers to Panama. Last year the United States imported $343 million worth of goods from Panama. Under the terms of this bill, the right of importation would be suspended.

All flights to and from Panama would be suspended upon enactment. The United States and Panama have very close banking relations. The United States dollar circulates freely in Panama. Our bill would suspend interbank transfers between United States banking institutions and Panama.

To be effective, the sanctions will have to hurt. They will have to cause sufficient economic disruption to convince Noriega that his rule is leading Panama to ruin. We would not propose these sanctions unless we sincerely believed that the people of Panama are ready to make the required sacrifices in order to regain their freedom.

The people of Panama are tired of waiting to see where the United States stands. They want Noriega out, and they want their country back.

Mr. President, we have major security interests at stake in Panama. The American people deserve to know whether the U.S. Congress is willing to defend their interests. I urge Senators to move quickly to approve this legislation.

Mr. GRAHAM. Mr. President, Panama over the last few months has experienced some of the most widespread anti-Government protests in recent history. A 48-hour strike has just ended which virtually shut down the country. Domestic Panamanian banks are closed and American banks in Panama are severely restricting withdrawals. More general strikes are planned.

The message that Panamanians from all sectors of that society are sending is that they want General Noriega out. They want the opportunity to elect their leaders freely and fairly. In a word, they want democracy. Legitimate and credible democracy. Not the despotic rule of a General Noriega who has brought shame to all Panamanians and danger to all Americans through his heavy-handed involvement in the international drug cartel.

The United States faces a stark choice. We must act now in concert with the Panamanian people to bring the strongest possible pressure on Noriega. We cannot continue to temporize and avoid taking the tough steps necessary to end quickly this sad chapter in Panama's history.

Mr. President, we shouldn't delay in taking this action. As we saw in the case of Haiti, where we failed utterly to send the kind of tough signal in support of democracy, situations like this only get worse when we avoid making tough decisions.

I believe the choice is clear. We must stand with the Panamanian people in their fight against Noriega. This bill provides us an opportunity to do so.

This bill commits us to a course of action which will rapidly escalate the economic and political pressure on General Noriega. It calls for a total trade embargo, cuts airline traffic between the two countries and bans all direct bank transactions between United States banks and their Panamanian counterparts. Nevertheless, it has the full support of the overwhelming majority of the Panamanian people.

President Delvalle, who is now in hiding after being illegally removed from office by Noriega, has called for this action. The United States still recognizes President Delvalle as the President of Panama. We should also recognize and respect his request for this legislation.

Mr. President, the time for action is now. We must not let events pass us by without sending a strong signal of solidarity with the people of Panama. We have a change to influence a democratic outcome. This is not the time for timidity.

Mr. DURENBERGER. Mr. President, I rise today as an original cosponsor of legislating a trade embargo with the Republic of Panama.

The bill would sever all trade between the United States and Panama, cut off direct air traffic, and prohibit all direct bank transfers from the United States to Panama. There is strong language that states no section of this bill should be misconstrued as an attack on the Panama Canal Treaties. The issue facing us is not adherence to the treaties—the issue today is a nation of 2 million people held hostage to what one prominent Panamanian calls narcomilitarism.

As a member of the Senate Finance Committee, I have been opposed to using trade as an instrument of first resort in foreign policy but in this case, a trade embargo is the next logical step in pressuring Noriega and his cronies to relinquish their stranglehold on Panama.

There are many reasons why Panama is a unique case and why the United States must act forcefully to cut off trade.

First, the events in the last week have led to a serious crisis in Panama. President Delvalle dismissed Noriega in a courageous and legal move. Noriega responded by getting his front men in the legislative to dismiss Delvalle in an unconstitutional maneuver.

Others have done their part to support the legitimate Government of Panama. A general strike has paralyzed Panama this week. Many Latin nations have recalled their ambassadors in protest over Noriega's de facto coup.

The United States must, now, get tough and send a powerful signal of support of the legitimate Government of Panama. The introduction of this legislation shows concerned Senators are willing to cut off trade with Panama.

Second, the legal President of Panama supports this effort as do many Panamanian business, civic, and political groups. Trade embargos are not generally supported by the leadership of the nation at which they are directed.

Third, this embargo has a real chance of working. I have opposed sanctions in the past because they are not effective—such as the misguided penalizing of American farmers after the Soviet Union invaded Afghanistan. But this measure can work because Panama is uniquely vulnerable. Panama has no currency of its own—they rely on the United States dollars. And while exports to Panama account for less than 1 percent of our total trade, 60 percent of all Panamanian exports come to the United States. Noriega and his thugs will not easily find alternative markets.

The issue in Panama is simple—Noriega must go. The No. 1 goal of U.S. policy must be to hasten the day he leaves power. Cutting off trade will increase the pressure on Noriega and let the people of Panama know the United States supports their democratic efforts.

Mr. KENNEDY. Mr. President, recent events in Panama require a response from the United States. That response should go beyond rhetoric. The time for words is over. It is time for the United States to act.

The legislation that we are introducing today—the Democracy in Panama Act of 1988—is not our idea. We are introducing this legislation in response to President Delvalle's direct and specific appeal. President Delvalle has asked for our moral and political and diplomatic support—and that support has been forthcoming. But he has also asked the United States to put pressure on the Noriega regime—by imposing a trade embargo. This legislation responds to that request.

This legislation is only one part of President Delvalle's own effort, as President of Panama, to put pressure on the Noriega government. He has himself taken heroic action. He has frozen Panamanian assets in United States banks. He has ordered Air Panama to halt all flights to the United States. He has requested that payment for the Panama Canal Commission to the Government of Panama be held in escrow. This legislation, which he has requested, is the Senate's contribution to President Delvalle's broader effort to return civilian rule to Panama and to restore democracy in that country.

General Noriega has been responsible for two political miracles. First, he has united the American political spectrum in a way that is unprecedented in my 25 years in the Senate. The coalition that is introducing this legislation comes from both parties and it also represents all elements of American political activity and thought—from the left to the right. And second, with his decision to defy President Delvalle's lawful order, General Noriega has achieved the same miracle in Panama. There is a real rainbow coalition in Panama today composed of representatives of all the political parties, even from General Noriega's own party, the PRD, working in support of President Delvalle's action.

We hope that the Congress will act rapidly and enact this legislation. But the realities of the legislative process are that it will take some time for Congress to act. The administration need not wait.

The President can impose economic sanctions against the Noriega regime with a stroke of his pen, and it is my hope that he, too, will respond to President Delvalle's appeal and impose certain economic sanctions against General Noriega's regime.

I have spoken with representatives of the Panamanian political parties, and they support a wholesale trade embargo, but they have also identified certain specific actions that could be taken which would have a narrower, more targeted impact. If the President declines to impose the kind of trade embargo that we are proposing in this legislation, there are still a series of actions that he could take that would increase the pressure on General Noriega. Some of those actions include the following:

A ban on all direct bank transactions between the two countries;

An embargo on all commercial transactions within the free zone;

An embargo on the importation of all dry goods from Panama;

An embargo on the importation of all sea products from Panama, including fish, shrimp, lobster, and scallops;

An embargo on the importation of all leather goods from Panama, a sanction that would have direct impact on General Noriega's own personal holdings;

An embargo on the importation of coffee from Panama; and

A ban on all airline traffic between the United States and Panama.

I would hope that the administration will act soon—and that, finally and at long last, all the departments, agencies, bureaus, and offices of the executive branch will be singing from the same hymnal.

I urge my fellow Senators to join us in this effort and support this legislation.

Mr. KERRY. Mr. President, I am delighted to join with my colleague, the Senator from New York, in introducing this legislation. I would like to express my appreciation to him for his diligent efforts with respect to this entire issue over these past months. The Senator sat in with me during his time when the Senate was out a week and a half, 2 weeks ago, for the entire hearings that were held with respect to Panama because of his interest in the area. And he has really been tireless in helping to advance not only the cause of democracy in Panama but also the very important issue of the war against drugs and the question of narcotics flowing into this country.

So I thank him for the support, for the effort, and for his commitment.

Mr. President, I think that both Senator D'AMATO and I wish to make it very clear that while we welcome totally the support of the Senator from Alabama, and others in this effort, this is not about the Canal Treaty, and none of us who are involved in this matter want any incorrect message sent to any part of Latin America, or Central America regarding that treaty. This Seantor supports that treaty. Almost all of the Senators involved in the efforts to create an embargo support that treaty. And nothing that we are doing, nothing that we are doing, is a surreptitious, overt, or any other kind of effort to reexamine that treaty or otherwise.

Where we wind up in the future with General Noriega is another issue. But that is not what this is about. This is about two things, Mr. President. This is about the democracy in a country from which that democracy is now being robbed by a petty dictator, and it is about the effort to restore that democracy for a people who want it. That is one thing it is about.

The second thing it is about is the integrity of the war against drugs and the effort of this country to maintain our own streets, school yards, homes, and cities free of this evil that continues to pour across our borders from other countries.

I think—and other Senators, I think, share this thought—this administration is at a crossroads, Mr. President. For years they have talked about the

war against drugs. For years, they have tried, and in fact successfully at times, to make that a core element of their approach to the politics of this country. Eighty percent of the cocaine that comes into the United States comes from Colombia. And General Noriega is in conspiracy with the Colombian cartel to reap the profits of those drugs coming into this country as well as to assist them to come into this country. That has got to stop.

If we are going to ask the kids of this country to just say no to drugs, then we have to have the courage as a country to just say no to General Noriega. That is what this is about—whether we are going to make real war against drugs, whether we are going to give reality to the rhetoric or whether we are going to lend credence to the people who believe we are not really serious.

For years, General Noriega has played us like a fine tune, Mr. President. He has been able to hand over a fellow here, a fellow there, to DEA. He has been able to give up a few middle men; he has been able to serve as an informant, all the while reaping the profits, buying a chateau in France, fattening accounts in Switzerland, and living off the fat of the land, not to mention the kids and others in this country who died as a consequence.

Mr. President, no one knows with a certainty that a full embargo is going to end what has happened. No one knows with a certainty that a full embargo is going to get rid of General Noriega, but we do know with a certainty that if we do nothing General Noriega will stay. We do know with a certainty that if we do not take strong steps to send a message to the people of Panama who are trying to conduct a strike, who are trying to win back their country, General Noriega will consolidate his power and he will be there.

Mr. President, we must send the strongest possible message to the people of Panama as well as the people of our own country that we are serious, that we are serious. And one of the problems is that General Noriega was on the payroll of the CIA while bringing drugs into this country, and has helped Panamanians to believe that the United States is not really serious about making a difference. He has changed Presidents before in Panama. Why should they believe that all of a sudden all of this hoopla is serious?

The people of Panama are waiting for the United States to do something, and people in the United States are waiting for the United States to do something. That is the reason that Senator D'AMATO, I, and other Senators have joined in this effort to try to take the initiative now to send the message that must be sent in order to move Panama closer toward its democracy hopefully and, Mr. President, in order to move us once and for all into the real world of trying to take the adequate risks that are necessary to stop what is happening with drugs.

You know, Officer Eddie Byrne was killed in New York the other day, sitting in a squad car, guarding a witness because he called up about narcotics transactions on the streets of New York. So a gunman comes up and pumps a few bullets through the window and he is gone. You know, it is ironic that the Senator from New York is one of the ones working so hard on this, because the Senator from Massachusetts with the citizens of Massachusetts lost a cop by the name of Sherman Griffiths. He walked up into an apartment building about a week ago to deliver a warrant to arrest some drug people. You know what? The door opened, and he walked into a bullet. And he is gone.

Forty-four people have died in the streets of Washington, DC, since January 1 of this year, Mr. President. We have a drug war in our streets. It is like all the movies we saw. You walk out on a street corner and the chances are you may see somebody killed. A couple of kids were standing on the corner and people were rubbed out right in front of them. We have to get serious.

As a former prosecutor, I know darned well you are not going to interdict all the drugs. I know that. I can remember from my days in Vietnam when we were trying to interdict the weapons the VC were bringing in. We had destroyers, gun boats, airplanes, and you cannot interdict it all.

But I do know we have not begun to leverage other countries in this war. We have not begun when the banks are sitting there freely transacting millions of dollars and bankers are vying for the drug money. We have not begun to make that fight, Mr. President. It is sickening. It is demoralizing, it is depressing, it is disgusting, and it is dishonorable. There are countless law enforcement officers who are being left in the lurch as a consequence of this.

You know, it is in a sense like a Vietnam all over again where you send the troops out and say here, you guys go do this and you have not clearly defined the goals, you have not clearly defined the strategy, and you do not know how you are going to get there in the end but the troops are out there doing their best. That is where the law enforcement community is, running risks, and we are not willing to back them up. But if we do not back them up by taking the strongest steps possible against General Noriega then we make a mockery of our obligations and our responsibilities, and of the goals that we are trying to achieve.

That is why I think this is so important, Mr. President. I hope we will take the action.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let me congratulate my colleague, Senator KERRY, for his eloquence in his statement and his dedication to this effort.

Let me say also, Mr. President, that if we cannot undertake the kind of action that will bring Noriega to his knees and rid Panama, not only of his corruption but those of his lieutenants who have dominated and seized this country, then I think it would be impossible for us to think we are going to be successful here in the United States.

This is a battle. It is not just about Panama. It has nothing to do with the Panama Canal, as my friend and colleague, JOHN KERRY, has indicated. It has to do with reclaiming domestic tranquility here in the United States. It is a battle for the streets, for the neighborhoods of our cities and hamlets, for the parks.

It is just a beginning. But if we cannot even begin to undertake it, what a sorry plight! All our protestations that we are working, that we are concerned, will be falling on deaf ears.

Mr. MURKOWSKI. Mr. President, Americans have watched the development in Panama, the deterioriation over the last several days, with certain justifiable alarm. Those of us who are sensitive to the sources of our Nation's energy supply have looked at it with somewhat broader perspective than perhaps has been expressed in this Chamber today.

The comments of my good friend, the junior Senator from New York, and his efforts to initiate appropriate requirements are efforts that I certainly support. We have a situation in Panama where not only has the lawful President of Panama been forced out of office and into hiding by what is essentially a military dictatorship, but also, these same military leaders have turned the once-proud republic into a major international bazaar, involving money laundering and illegal drug traffic; and that is generally conceded by all those who have observed the Panamanian deterioration.

The United States, with out continuing concern for human rights, our stated intent to war on drugs, and our strategic interests in the peninsula, cannot ignore the situation in which the Panamanian people find themselves. Unfortunately, we seem to be caught in a Catch-22.

We have the reality that there has been a parliamentary process under the auspices of the dictator, and the significance of that is that the human rights of the Panamanian people are jeopardized. It is evident that Noriega,

in the manner in which he is conducting the affiars of that nation, s certainly not in concert with the wishes of the Panamanian people.

What we have to address further, and my reason for being here at this late hour, are some other key strategic interests that have not been discussed, as we reflect on what action we should initiate with regard to the deteriorating Panamanian situation.

Mr. President, I would like to focus for a moment on a transportation system across Panama other than the Panama Canal, and that is the trans-Panama pipeline.

Beginning at the Pacific coast of Panama, at Puerto Armuelles, and running 81 miles to the Atlantic coast port of Chirique Grande, the trans-Panama pipeline serves our Nation—our Nation's critical link between the west coast crude oil supply reserves, including those coming from Alaska, and our Midwestern and Eastern refineries.

Approximately 600,000 to 800,000 barrels of oil originating in my State of Alaska, per day, are pumped through the pipeline. This represents roughly 10 percent of the total U.S. crude oil production each day in this country.

I think we should reflect on who has the responsibility of the security of this pipeline. The responsibility rests with Noriega and his National Guard. Even a temporary disruption in the flow would cause severe supply disruptions, in this country. The market for oil on the west coast would be thrown into disarray as the oil would be forced into the market there.

There would be problems with storage on the west coast. We lack the ability to store that volume of oil.

Undoubtedly, we would have to limit oil production on the west coast and Alaska, while American consumers on the east coast and the Midwest would have to turn to foreign suppliers—namely, our friends in the Mideast—and be subject to being held hostage again.

The alternatives to the trans-Panama pipeline are not very promising. We have the availability of the Panama Canal, but it would be necessary to put into place smaller vessels to shuttle the oil. We could not possibly do it in a short period of time to meet the requirements of our refineries in the Gulf States.

The other alternative, of shipping the oil around the tip of South America, is infeasible, given the realities of time and distance.

What we are looking at is a real, potential threat. We are talking about taking action, as we should, with regard to the deteriorating situation in Panama. But we also have to look to the reality of retribution, and that retribution could be very real; because of the pipeline which is little known by a majority of my colleagues but is known to me because it is a crucial artery for moving a good deal of oil production from the State of Alaska.

The point I wish to make is that this pipeline does not go through the Panama Canal corridor. It is not covered by the security aspects of the Panama Canal Treaty.

The pipeline is located roughly 200 miles from Panama City in the Canal Zone. I have been there; I have flown over it. It goes right through the jungle.

Its ownership, interestingly enough, consists primarily of an American private corporation, Petroterminal of Panama, which is a joint venture between a group in New York, Chicago Bridge and Iron Corp., and, most important, the Panamanian Government.

So the current Panamanian Government owns a major portion of a pipeline through which 12 percent of the domestic oil produced in the United States flows every day.

Make no mistake about it. It would be interesting for this body to have some idea where the revenues are currently going because I am sure that most of my friends would assume that the major contributions to the Panamanian economy probably comes from the transit of the Panama Canal.

Figures indicate that the Panamanian Government receives revenues from the Panama Canal transit of about $94 million. However, the pipeline contribution to the Panamanian Government also represents a substantial aspect of their earnings

This is a 40-inch type line capable, as I said earlier, of handling approximately 800,000 barrels per day.

So, Mr. President, I think as we continue to debate the merits and as I join with the members of the Foreign Relations Committee tomorrow, who will again be taking up this issue as to what action we can take, we should consider our exposure.

Now, I have discussed this matter of our national security with the Secretary of Energy and asked him to look into just what safeguards we have taken, knowing very well that there are not very many alternatives available to us since this pipeline is outside the Panama Canal area where we have a security interest.

But in any event, Mr. President, it is a problem that we must deal with the realistic exposure we have and as we deal with this issue in the next few days meetings with the administration and discussions in the Committee on Foreign Relations and here on the floor we must reflect on all aspects of the situation and focus on the importance of the trans-Pananmanian pipeline as well.

We must do nothing to jeopardize its flow and we must allow no one else to do so either.

In conclusion, Mr. President, it is indeed unfortunate that any action which we contemplate taking is going to have an action, of course, an unfortunate effect on the Panamanian people, so we must make our decisions based on an objective reality that we are charting a new course in foreign policy in our hemisphere as we reflect on the position that we have been put in in Panama.

I thank the Chair at this late hour for allowing me to conclude my speech.

---

By Mr. WEICKER (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. PELL, and Mr. STEVENS):

S.J. Res. 269. Joint resolution to designate the week beginning October 30, 1988, as "National Marine Technology Week"; to the Committee on the Judiciary.

NATIONAL MARINE TECHNOLOGY WEEK

● Mr. WEICKER. Mr. President, I rise today to introduce a Senate Joint Resolution to designate the week beginning October 30, 1988, as "National Marine Technology Week." I do so on behalf of myself and my distinguished colleagues Senators HOLLINGS, INOUYE, KERRY, LAUTENBERG, PELL, and STEVENS.

Those who practice the marine sciences and marine engineering in the United States are all too infrequently recognized for the tremendous contributions they make to the well-being of our Nation. Only through their efforts are we able to utilize the many resources of the oceans that we do today; and only through their future efforts we will be able to continue to explore, wisely I hope, new uses of the world's oceans.

For years I have been working with my colleagues here in the Congress, and with assorted Federal agencies, to bolster the financial support for, and enhance the public appreciation of, our country's significant efforts in the marine sciences. The resolution I am introducing today takes this appreciation a step further by dedicating 1 week to the commemoration of the accomplishments of the United States' marine research community.

Our Nation has a rich heritage of maritime achievement, with more than two centuries of technological excellence and innovation in the study of the global seas and the development of their vast resources. In 1769, for example, Benjamin Franklin and Timothy Folger published the first chart which showed the course of the Gulf Stream, one of the most significant oceanographic features of the North Atlantic ocean. Some 40 years later, President Jefferson authorized the establishment of the U.S. Coast Survey to chart the waters of our country.

The need for knowledge about the seas has spurred the continuous development of technologies necessary to make further exploration possible. This technological progression can be seen in our manned exploration of the deep sea. In 1934 Otis Barton and William Beebe took a dive to just over 3,000 feet in a steel bathysphere suspended from a cable. By 1964 manned undersea technology had developed to the point where Dr. Jacques Piccard and Lt. Don Walsh, U.S. Navy, could dive to the deepest point in the ocean. Piccard and Walsh, in the bathyscaph Trieste I, descended to a depth of 35,800 feet in the Challenger Deep of the Marianas Trench.

Today there are many manned submersibles available for undersea research. One of these, the Alvin, became famous in 1986 for its role in extensively photographing the wreckage of the R.M.S. *Titanic,* which had lain undisturbed for 75 years under 13,000 feet of the North Atlantic Ocean.

We also have undersea laboratories available to us today where scientists can spend weeks at a time living and working on the sea floor, studying in situ the life forms and processes thriving beneath the surface. I am proud to have been on several missions in one of these undersea labs, the National Oceanic and Atmospheric Administration's Hydrolab, which is now on permanent display at the Smithsonian's Museum of Natural History. The opportunities made available to our Nation's research community by these undersea vessels and laboratories are indeed significant.

Today's ocean engineers and scientists must carry on the traditions of these pioneers. Many unanswered questions remain for our marine researchers. There are significant pressures on the marine environment today, and there is an ever increasing need to understand the interaction of the atmosphere and the oceans which so greatly influences our global climate. It is important that we honor their past achievements and spur them on to meet the challenges ahead.

By establishing National Marine Technology Week we acknowledge the contributions of academic, Federal, and industry scientists and engineers whose diligence, innovation, and dedication to excellence continues to bring international recognition to America's achievements in marine technology. Mr. President, I hope that my colleagues will join me in cosponsoring this legislation, and in seeing it enacted into law.●

---

By Mr. RIEGLE (for himself and Mr. DANFORTH):

S.J. Res. 270. Joint resolution designating June 26 through July 2, 1988, as "National Safety Belt Use Week"; referred to the Committee on the Judiciary.

NATIONAL SAFETY BELT USE WEEK

● Mr. RIEGLE. Mr. President, Senator DANFORTH and I are today introducing legislation to designate June 26 through July 2, 1988 as "National Safety Belt Use Week."

Since 1984, 32 States and the District of Columbia have enacted safety belt laws. These statutes affect more than 200 million people in the United States. Child safety seat laws are in effect in all 50 States.

The results of these laws can be seen in the traffic fatality and injury statistics. The Department of Transportation estimated that in 1986 more than 2,200 lives were saved by the use of seatbelts, with 80 percent of those in States with mandatory laws on the books. Thousands of critical injuries are avoided each year, as well, through the proper use of safety belts.

Mr. President, seatbelts have been shown to be very effective in reducing death and injuries from automobile accidents. Indeed, most people know that fact, yet less than one-half of all Americans use their safety belts on a regular basis. The number of people using belts, however, shows improvement every year, and this improvement will continue with continued educational efforts.

These efforts will be aided by the passage of this resolution, which will permit promotional efforts to be undertaken around the country. We hope that our colleagues will join us in sponsoring this resolution which will serve to further the goal of universal seatbelt usage in the United States.

Mr. President, I ask that the text of this resolution be printed in the RECORD at the conclusion of my statement.●

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 270

Whereas safety belts and child safety seats have proven to be effective in reducing highway fatalities and injuries;

Whereas the legislatures of 32 States and the District of Columbia have recognized the benefits of safety belt use and have enacted safety belt use laws;

Whereas these laws apply to nearly 205,000,000 persons;

Whereas child safety seat use laws are in effect in every State;

Whereas as a result of safety belt and child safety seat use laws and other activities, millions of Americans are regularly wearing safety belts and using child safety seats;

Whereas use of these safety systems by all drivers, passengers, and children would prevent thousands of fatalities and injuries each year;

Whereas use of safety belts and child safety seats should be encouraged even as passive restraint systems are phased into the vehicle fleet; and

Whereas numerous public interest and safety organizations are working to encourage more extensive use of safety belts and child safety seats: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That June 26 through July 2, 1988, is designated as "National Safety Belt Use Week", and the President is authorized and requested to issue a proclamation—

(1) to urge the people of the United States—

(A) to wear safety belts and to have their children wear safety belts, and

(B) to use child safety seats, and

(2) to encourage State and local governments, schools, health agencies, public safety and law enforcement agencies, motor vehicle manufacturers, the insurance industry, the military, media organizations, the business community, the entertainment industry, and other concerned organizations and officials to promote greater use of these essential safety devices.

---

## ADDITIONAL COSPONSORS

S. 556

At the request of Mr. CRANSTON, the names of the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Illinois [Mr. SIMON], and the Senator from Connecticut [Mr. WEICKER] were added as cosponsors of S. 556, a bill to prohibit investments in, and certain other activities with respect to, South Africa, and for other purposes.

S. 703

At the request of Mr. SPECTER, the name of the Senator from Maryland [Ms. MIKULSKI], was added as a cosponsor of S. 703, a bill to amend title 18, United States Code, including the Child Protection Act, to create remedies for children and other victims of pornography, and for other purposes.

S. 1220

At the request of Mr. KENNEDY, the name of the Senator from New Jersey [Mr. BRADLEY], was added as a cosponsor of S. 1220, a bill to amend the Public Health Service Act to provide for a comprehensive program of education, information, risk deduction, training, prevention, treatment, care, and research concerning acquired immunodeficiency syndrome.

S. 1332

At the request of Mr. MOYNIHAN, the name of the Senator from Minnesota [Mr. DURENBERGER], was added as a cosponsor of S. 1332, a bill to establish a remedial education treatment program as an alternative to criminal incarceration for first time juvenile offenders who are determined to be learning disabled as a means of reducing recidivism rates among such offenders.

S. 1366

At the request of Mr. KENNEDY, the name of the Senator from Michigan [Mr. LEVIN], was added as a cosponsor of S. 1366, a bill to revise and extend the programs of assistance under title X of the Public Health Service Act.

S. 1761

At the request of Mr. DURENBERGER, the name of the Senator from Montana [Mr. MELCHER], was added as a cosponsor of S. 1761, a bill to amend the Internal Revenue Code of 1986 to provide that a decedent's spouse may enter into a cash lease of farm and other real property with family members and still qualify for the special estate tax valuation of the property.

S. 1776

At the request of Mr. ARMSTRONG, the names of the Senator from Michigan [Mr. LEVIN], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 1776, a bill to modernize United States circulating coin designs, of which one reverse will have a theme of the Bicentennial of the Constitution.

S. 1787

At the request of Mr. DASCHLE, the name of the Senator from Hawaii [Mr. INOUYE], was added as a cosponsor of S. 1787, a bill to amend title 38, United States Code, to prescribe certain presumptions in the case of veterans who performed active service during the Vietnam era.

S. 1911

At the request of Mr. HATFIELD, the names of the Senator from Tennessee [Mr. SASSER], the Senator from Arizona [Mr. MCCAIN], and the Senator from Montana [Mr. MELCHER] were added as cosponsors of S. 1911, a bill to amend title 5, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies.

S. 1929

At the request of Mr. BUMPERS, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1929, a bill to amend the Small Business Investment Act to establish a corporation for small business investment, and for other purposes.

S. 1943

At the request of Mr. KENNEDY, the name of the Senator from Washington [Mr. ADAMS] was added as a cosponsor of S. 1943, a bill to amend the Public Health Service Act to revise and extend the authority of the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, including revising and extending the program of block grants for the provision of services with respect to mental health and alcohol and drug abuse.

S. 1998

At the request of Mr. BREAUX, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1998, a bill to regulate interstate natural gas pipelines providing transportation service which bypasses local distribution companies and to encourage open access transportation by local distribution companies at cost-based costs.

S. 2025

At the request of Mr. MELCHER, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 2025, a bill to amend title II of the Toxic Substances Control Act.

S. 2075

At the request of Mr. DASCHLE, the names of the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Tennessee [Mr. SASSER] were added as cosponsors of S. 2075, a bill to amend the Internal Revenue Code of 1986 to permit tax free purchases of certain fuels, including purchases by farmers.

S. 2077

At the request of Mr. KASTEN, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of S. 2077, a bill entitled the "Livestock Producers' Recordkeeping Act of 1988."

S. 2095

At the request of Mr. METZENBAUM, the name of the Senator from Vermont [Mr. STAFFORD] was added as a cosponsor of S. 2095, a bill to strengthen the protections available to private employees against reprisal for disclosing information, to protect the public health and safety, and for other purposes.

S. 2098

At the request of Mr. HOLLINGS, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 2098, a bill to amend the Federal Aviation Act of 1958 to prohibit discrimination against blind individuals in air travel.

S. 2114

At the request of Mr. HOLLINGS, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 2114, a bill entitled the "Public Telecommunications Act of 1988."

S. 2117

At the request of Mr. MELCHER, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 2117, a bill to extend the statute of limitations applicable to certain claims under the Age Discrimination in Employment Act of 1967 that were filed with the Equal Employment Opportunity Commission before the date of enactment of this act.

S. 2129

At the request of Mr. BAUCUS, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 2129, a bill to amend the Internal Revenue Code of 1986 to repeal the application of the uniform capitalization rule with respect to animals produced in a farming business.

SENATE JOINT RESOLUTION 235

At the request of Mr. DECONCINI, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of Senate Joint Resolution 235, a joint resolution deploring the Soviet Government's active persecution of religious believers in Ukraine.

SENATE RESOLUTION 377

At the request of Mr. LUGAR, the mane of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Resolution 377, a resolution to express the sense of the Senate regarding negotiations on a new long-term agreement on agricultural trade with the Soviet Union.

SENATE RESOLUTION 383

At the request of Mr. LAUTENBERG, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of Senate Resolution 383, a resolution to express the sense of the Senate regarding future funding of Amtrak.

## SENATE CONCURRENT RESOLUTION 101—PROVIDING FOR A CONDITIONAL ADJOURNMENT OF THE SENATE

Mr. BYRD submitted the following concurrent resoluton; which was considered and agreed to:

S. CON. RES. 101

*Resolved by the Senate (the House of Representatives concurring),* That when the Senate adjourns at the close of business on Thursday, March 3, 1988, or on Friday, March 4, 1988, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned until 12 noon on Monday, March 14, 1988, or until 12 o'clock meridian on the second day after the Members are notified to reassemble pursuant to section 2 of this resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate, after consultation with the Minority Leader of the Senate, shall notify the Members of the Senate to reassemble whenever, in his opinion, the public interest shall warrant it.

## SENATE CONCURRENT RESOLUTION 102—RECOGNIZING THE CONTRIBUTIONS OF JOHN FOSTER DULLES

Mr. DANFROTH (for himself, Mr. PELL, Mr. BOND, and Mr. SARBANES) submitted the following concurrent resolution; which was read and placed on the calendar:

S. CON. RES. 102

Whereas February 25, 1988, marked the 100th anniversary of the birth of John Foster Dulles, a commanding Secretary of State who confronted issues his Nation had not previously faced: the changing configuration of power in the nuclear age and relations with other nations, the links between national economic structures, competing systems of government ideology, and the dilemmas posed by great power status for a democratic society;

Whereas John Foster Dulles has, in his contributions to the peace of reconciliation through the treaty with Japan and the securing of the Austrian State Treaty, and in his steadfast support of a bipartisan ap-

proach to foreign policy as exemplified by his advocacy of the North Atlantic Treaty Organization and the Marshall Plan, served the highest calling of creativity and dedication in international relations;

Whereas on the anniversary of his birth, Princeton University convened a conference—bringing together a unique combination of scholars of diplomatic history, journalists, associates of Dulles, and practitioners of the craft of diplomacy—to evaluate Dulles's contributions to America's international policies and to explore the many parallels between international affairs today and during the period in which Dulles played a creative role in shaping international policy; and

Whereas Princeton University has initiated a program of research, study, and publication addressing leadership in international affairs named for John Foster Dulles, using the resources of the Dulles Diplomatic Library at Princeton and linking it to the Woodrow Wilson School's Center of International Studies for the purpose of supporting the efforts of graduate students, scholars early in their careers, and visiting scholars from other countries: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of the Congress that, on the centennial of the birth of the statesman of the nuclear age, John Foster Dulles, Americans should examine the contributions of John Foster Dulles in international affairs and the importance of his leadership in international affairs and should study our Nation's past in order to gain insight and inspiration in meeting the challenges that are strikingly similar to those faced by John Foster Dulles.

Mr. DANFORTH. Mr. President, Senators PELL, BOND, SARBANES, and I are today submitting a concurrent resolution expressing the sense of the Congress regarding the important contributions of John Foster Dulles in international affairs, on the occasion of the centennial of his birth. The concurrent resolution also takes note of and commends a program initiated last weekend at Princeton University, in honor of Secretary Dulles, for the study of leadership in foreign affairs.

Mr. President, I encourage my colleagues to support this worthwhile concurrent resolution and ask unanimous consent that two statements prepared for Princeton's John Foster Dulles Centennial Conference—one, a remembrance by Secretary Dulles's sister, Eleanor Lansing Dulles; the other, a description of the new Princeton program—be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOHN FOSTER DULLES REMEMBERED

(By Eleanor Lansing Dulles)

["I summon up remembrance of things past."—William Shakespear, Sonnet III]

In the blizzard of 1888 in Washington, a child was born. The child, John Foster Dulles, was the first for Edith and Allen Macy Dulles. His mother was struck down with puerperal fever. It was not until April that mother and son were able to travel to their home in Watertown, New York.

As a boy he was reared in the shadow of his grandfather, a great soldier and former Secretary of State from Indiana, John W. Foster. He sailed the rugged waters of Lake Ontario, fishing, swimming long distances, and enjoying the unspoiled islands. Inland, he roamed the woods of Northern New York with his father. He caught the spirit of the gospels in the Presbyterian church on Washington Street in Watertown as he listened to his father's sermons.

Later, as a developing teenage student at Princeton, he found the ideals of the philosopher Professor Hibben and of President Woodrow Wilson of compelling force. He was still an undergraduate in 1907 when he accompanied John W. Foster as his aide to the Hague Peace Conference. Then, in 1908, with a bachelor's degree as valedictorian and a fellowship, he went to Paris to study under Henri Bergson, the philosopher of continuity and change.

He knew the bright snows of Zermatt and the Breithorn and saw many of Europe's art treasures. He learned of European ways and customs.

Back in Washington, he studied at George Washington University, completing his law courses in 1911.

When war came, his abilities were tested as Woodrow Wilson sought his services to deter several nations to the south from succumbing to enticements of the Central Powers to join their cause. Denied the possibility of combat because his eyes had been weakened by malaria while in the Caribbean, he still was given the rank of major and served the War Trade Board.

At the war's end—to the surprise of his uncle, Secretary of State Robert Lansing—he was requested to join the peace commission in Paris. There, in agreement with John Maynard Keynes, he tried to lessen the tragedy of defeat by reducing the demands on Germany for reparations. The struggle for restraint left him with a resolve that carried through two decades to another war. As he drafted the Japanese Peace Treaty in 1950 he remembered 1919. Also, in his later plea to Khruschev in 1955 for "deeds, not words," he had the past in mind as he gained agreement on the Austrian State Treaty.

Although success at Paris was limited, Foster was recognized with an appointment to the Reparations Commission. This post he resigned shortly to return to New York.

Life was not easy for the young lawyer. At first he earned $100 a month, subsidized somewhat by his grandfather, and rose slowly to higher levels. He had married his love of a lifetime, Janet Avery, and in 1913 they had the first of three children—John Watson Foster Dulles. From the first Foster was associated with some of the keenest minds in the profession and had to apply all his talents to demanding problems of international corporations and financial operations.

His interests in international affairs were soon broadened by his work with the Federal Council of Churches. Here his moral principles and his concern for world order and peace were deeply involved. For more than a decade, Foster found churches a useful vehicle in striving for world peace, seriously threatened by dictators. His efforts took the form of speaking and writing, including the pamphlet *The Six Pillars of Peace.* But war came.

In 1944, Foster was called to Washington by the State Department to join those working under Roosevelt on plans for the United Nations. As he worked on the charter, he pondered the questions of sovereignty, the veto to protect national interest, and regional pacts. In 1945 in San Francisco and later in the Council of Foreign Ministers, he faced the hard rock of Soviet resistance. Communism, as he further learned from reading Stalin's *Problems of Leninism,* was unacceptable and aggression must be stopped. But even as he took refuge in his solitary cabin on Duck Island in Lake Ontario, he faced the fact the nations must somehow live together on the one planet available.

The art of bipartisanship was complicated and demanding. Foster testified in support of NATO and the Marshall Plan.

His burdens became heavier as Eisenhower, assuming the presidency, called on him to be Secretary of State. The similarities of ideals and the differences of methods of the two men were striking. Here was real cooperation in statesmanship.

The years of crisis, of deterrence, were spectacular. They involved Korea, Indochina, Guatemala, Suez, Hungary, Quemoy and Matsu, Lebanon, Berlin and many vulnerable areas. They showed how a nation at the brink of conflict could move to more secure areas and remain at peace. The NATO alliance survived. Israel built a dynamic future; Austria was free, Germany grew in strength. Europe's economy wove a texture of opportunity. Great Britain, Italy, France, Belgium, came through hard times to better days.

In February 1959, Foster, though ill, was in England and Germany. His last talk with Adenauer was warm and understanding. The Chancellor knew he was suffering. Foster had been at the helm of the ship of state for more than six years, after serving the nation for more than fifty, when the illness of 1958 became the fatal cancer of 1959. He entered Walter Reed. There, for more than three months, he endured the pain, keeping medication to a minimum so his mind was clear for work.

Eisenhower, the friend and leader, sadly visited him. Churchill, MacMillan and others came to the hospital.

The journey from the snows of 1888 to the May morning 71 years later had been a long adventure. There had been wars and rumors of war, high endeavor and rough encounters—he had relished them all. His death in 1959 ended a life-long service to his country. Now, as we look back, we can say, "he brings your time some honour." [1]

THE JOHN FOSTER DULLES PROGRAM FOR THE STUDY OF LEADERSHIP IN FOREIGN AFFAIRS

For some time, family and friends of John Foster Dulles have explored ways to honor his courage and leadership and his contributions to world peace. It is fitting that any memorial—tangible or of the mind and spirit—should focus on Princeton University. Dulles was a graduate of the Class of 1908, and Princeton remained for him a lifelong source of renewal.

The Dulles Library of Diplomatic History, a two-story hexagonal addition to the University's Firestone Library, was built to contain the personal papers that the Secretary of State and other members and associates of the Dulles family gave to Princeton. Now a second endeavor is underway. Again with the backing and support of friends and family, the John Foster Dulles Program for the Study of Leadership in Foreign Affairs has been created at Princeton.

---

[1] Martial, VII, xciv (p. 491).

Centered in the Woodrow Wilson School of Public and International Affairs, the program will sponsor research and publications relating to leadership in international affairs and will appropriately be named for John Foster Dulles—whose career illuminates the relevance of an individual's principles of statesmanship to the diplomacy of the present and future.

It is expected that the program will include a professorship named for Dulles and that it will also support visiting senior scholars designed as John Foster Dulles Fellows. The dean of the Woodrow Wilson School has named an interdisciplinary faculty committee to recommend appointment of Dulles Fellows and to oversee the continuing program. Professor Fred I. Greenstein, chairman of the Department of Politics, is the committee's first head.

The Dulles scholars' association with their counterparts in the Woodrow Wilson School's other programs will bring to the school's major studies in international relations that sharp focus on leadership so appropriate to John Foster Dulles and so relevant to all periods.

The objective is to create an endowed fund of $2.7 million. That amount would endow a chair ($1.5 million) as a permanent memorial to Secretary Dulles, while also providing endowment funds to support visiting scholars and graduate students. This support, provided under the auspices of the Dulles Memorial, would fill a need that cannot be met by Princeton's available funds for research and teaching in this field.

## SENATE RESOLUTION 390—RESOLUTION RELATING TO CONDITIONS FOR THE EXECUTION OF ARREST WARRANTS COMPELLING THE ATTENDANCE OF ABSENT SENATORS

Mr. SPECTER (for Mr. SIMPSON, for himself, Mr. CHAFEE, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. COCHRAN, Mr. QUAYLE, Mr. HEINZ, Mr. MCCONNELL, Mr. BOND, Mr. EVANS, Mr. KASTEN, Mr. D'AMATO, Mr. WALLOP, Mr. HUMPHREY, Mr. WARNER, Mr. GARN, Mr. DOMENICI, Mr. GRAMM, and Mr. GRASSLEY) submitted the following resolution; which was referred to the Committee on Rules and Administration.

S. RES. 390

*Resolved,* That it is the sense of the Senate that the Standing Rules of the Senate should be changed to include the following:

"In exercising his authority to compel the attendance of absent Senators pursuant to paragraph 4 of rule VI of the Standing Rules of the Senate, the Sergeant at Arms shall comply with the following conditions:

"1. No arrest warrant shall be executed between the hours of eleven o'clock p.m. and eight o'clock a.m., unless the pending business is of a compelling nature.

"2. Any arrest warrant shall be signed by the Vice President, the President pro tempore, the Acting President pro tempore, or his official designee named in open session, or, if absent, in writing.

"3. Any arrest warrant shall include a written statement establishing the reasons for arrest.

"4. Whenever an arrest warrant is to be issued for an absent Senator, arrest warrants also shall be issued, contemporaneously, for all other Senators absent without excuse, without regard to party affiliation; and the Sergeant at Arms shall make equivalent efforts to execute all such arrest warrants."

## AMENDMENTS SUBMITTED

## CONDITIONS FOR THE EXECUTION OF ARREST WARRANTS COMPELLING THE ATTENDANCE OF ABSENT SENATORS

### ARMSTRONG AMENDMENT NO. 1622

(Ordered referred to the Committee on Rules and Administration.)

Mr. ARMSTRONG submitted an amendment intended to be proposed by him to the resolution (S. Res. 390) to express the sense of the Senate with respect to establishing conditions for the execution of arrest warrants compelling the attendance of absent Senators; as follows:

At the end of the resolution, add the following new sections:

"5. No motion to instruct the Sergeant at Arms to arrest absent Senators shall be in order until the Senate shall have, first, adopted a motion directing the Sergeant at Arms to request the attendance of absent Senators and shall have, second, adopted a motion directing the Sergeant at Arms to compel the attendance of absent Senators. No motion directing the Sergeant at Arms to arrest absent Senators shall be in order until two hours shall have passed since the result of the vote on the motion to compel the attendance of absent Senators was announced. No motion to instruct the Sergeant at Arms to arrest absent Senators shall be agreed to between the hours of ten o'clock post meridian and eight o'clock ante meridian unless no Senator votes in the negative. All votes required or permitted by this paragraph shall be determined by the yeas and nays, and the names of the persons voting for and against such motion or question shall be entered on the Journal.

"6. No arrest warrant for any absent Senator shall be issued unless under the signature of the Vice President or President pro tempore and attested by the Secretary."

## INTELLIGENCE OVERSIGHT

### McCLURE AMENDMENT NO. 1623

Mr. McCLURE proposed an amendment to the bill (S. 1721) to improve the congressional oversight of certain intelligence activities, and to strengthen the process by which such activities are approved within the executive branch, and for other purposes; as follows:

On page 16, after line 19: In Section 503 add the following new subsection (c)(5) and redesignate the following subsections accordingly.

(5) Notwithstanding the provisions of subsections (2), (3) and (4) above, when the President determines that the risk of disclosure would pose an additional, direct and immediate threat to the life of a U.S. official or agent of the U.S. government, or a foreign national who is assisting the U.S. government in a special activity, or a hostage or other person for whose benefit the activity is being conducted; or that compliance with the provisions of subsections (2), (3) or (4) would jeopardize the cooperation of other intelligence services when this cooperation is critical for U.S. interests or for the success of the operation, the President may for a limited time withhold transmission of findings or determinations pursuant to subsections (1) or (2) of this section. In such cases, the President shall notify the chairmen and ranking members of the Intelligence committees, the Senate Majority and Minority leaders, and the Speaker and Minority leader of the House of Representatives, that a special activity which meets the above criteria is being conducted. However, at this time, the President shall not be required to report the finding or determination authorizing the operation or otherwise disclose the details of the activity in question. The President shall personally reconsider each week thereafter the reasons for continuing to limit such notice, and shall provide a statement on a weekly basis to the Members of Congress identified herein above confirming his decision. The President shall immediately provide full notice when he determines that the circumstances described above no longer exist. At this time, the President shall provide a detailed accounting of the reasons explaining why full notice to the intelligence committees, the Chairman and Ranking Members of these committees, the Majority and Minority leaders of the Senate, and the Speaker and Minority Leader of the House, was withheld.

## RETIREMENT AND SURVIVORS' ANNUITIES FOR BANKRUPTCY JUDGES

### HEFLIN AMENDMENT NO. 1624

Mr. BYRD (for Mr. HEFLIN) proposed an amendment to the bill (S. 1630) to provide for retirment and survivors' annuities for bankruptcy judges and magistrates, and for other purposes; as follows:

On page 5, line 16, strike out "the effective date of this Act" and insert in lieu thereof "July 31, 1987".

On page 11, line 1, after "(c)" insert "of title 5".

On page 11, line 3, strike out "(5)" and insert in lieu thereof "(7)".

On page 11, line 15, strike out "the date of the enactment of this Act." and insert in lieu thereof "July 31, 1987. A bankruptcy judge or magistrate retiring on or after July 31, 1987, but before the date of enactment of this Act, shall be entitled to make an election under section 2(c)(2) of this Act within 90 days after such date of enactment."

## NOTICES OF HEARINGS

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GLENN. Mr. President, I would like to announce that the Governmental Affairs Committee will hold hearings on Tuesday, March 15, at 10 a.m., on proposed legislation relating to the elevation of the Veterans' Administra-

tion to Cabinet status. For further information, please call Len Weiss, staff director, on 224-4751.

Mr. President, I would like to announce that the Governmental Affairs Committee will hold markup on Tuesday, March 15, at 9:30 a.m., on S. 2037, the Presidential Transition Effectiveness Act; S. 1856, reauthorization of National Historical Publications and Records Commission Amendment Act of 1987; S. 1381, the Cash Management Improvement Act of 1987; and the nominations of Frank Schwelb, to be an associate judge of the District of Columbia Court of Appeals; and Cheryl Long, to be an associate judge of the District of Columbia Superior Court.

SUBCOMMITTEE ON GOVERNMENTAL EFFICIENCY

Mr. President, I would like to announce that the Governmental Affairs Subcommittee on Government Efficiency, Federalism, and the District of Columbia will hold a field hearing on Friday, March 11, at 10 a.m., on Federal-State cooperation in job training. The field hearing will be held in McKeesport, PA. For further information, please call Andrew McElwaine, minority staff director, on 224-4508.

## AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Energy and Natural Resources Committee, Subcommittee on Public Lands, National Parks and Forests, be authorized to hold hearings on S. 1544, to provide for cooperation with State and local governments for the improved management of certain Federal lands, and H.R. 2652, to revise boundaries of Salem Maritime National Historic Site in the Commonwealth of Massachusetts, during the session of the Senate Thursday, March 3, 1988.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FEDERAL SPENDING, BUDGET, AND ACCOUNTING

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Federal Spending, Budget, and Accounting of the Governmental Affairs Committee be authorized to meet during the session of the Senate on Thursday, March 3, 1988, to hold a hearing on legislation dealing with the Former President Act of 1987.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, March 3, 1988, to conduct a hearing on proposals to improve the efficiency and effectiveness of management of public buildings.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary be authorized to meet during the session of the Senate on March 3, 1988, to consider S. 1301 and S. 1971, regarding the Berne Convention.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON MANPOWER AND PERSONNEL

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Manpower and Personnel of the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, March 3, 1988 in open session to review Department of Defense officer promotion procedures.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on March 3, 1988, to hold hearings on the nomination of William E. Evans, of California, to be Under Secretary of Commerce for Oceans and Atmosphere.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on March 3, 1988, to hold hearings on S. 1848, the Minority Business Development Act of 1987.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, March 3, 1988, in open session to consider the nomination of Mr. Jack Katzen, to be Assistant Secretary of Defense for Production and Logistics.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, March 3, 1988, to review those programs which fall within the jurisdiction of the committee as contained in the President's proposed budget for fiscal year 1989, focusing on the Forest Service, and the Federal Energy Regulatory Commission beginning.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on March 3, 1988, to consider the nomination of Mark Sullivan, to be General Counsel of the Treasury Department, to consider Senate Concurrent Resolution 94, to approve the Finance Committee rules of procedures, and to hold a hearing on the President's budget.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, March 8, 1988, to hold a hearing on Intelligence Matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate on Thursday, March 3, 1988, to hold a markup on S. 721, the Indian Development Finance Corporation Act; and, S. 802, lands held in trust for the Blackfeet Indian Tribe, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

### BICENTENNIAL MINUTE

MARCH 3, 1873: FIRST CONGRESSIONAL RECORD

(By request of Mr. SIMPSON, the following statement was ordered to be printed in the RECORD:)

● Mr. DOLE. Mr. President, on March 3, 1873, 115 years ago today, Congress authorized the Government Printing Office to publish the first issue of the CONGRESSIONAL RECORD.

Publication of the RECORD marked the end of a long debate that had begun in the First Congress. The Constitution required that each House of Congress keep a journal of its proceedings. These journals are the minutes that the Secretary of the Senate and the Clerk of the House began to keep back in 1789, and still publish today. But various private stenographers, connected with various newspapers, attempted to record a more complete

version of the debates. Stenography was a much cruder art in the 18th century, and many Members of those early Congresses felt unhappy with the published accounts of their speeches. They proposed that Congress hire its own reporters of debate. But Representative James Madison strongly opposed this plan, warning that once reporting become official, Members would suffer the task of correcting their remarks in perpetuity. So reporting remained a private venture.

In 1848, after decades of complaint over shoddy and often politically slanted stenography, the Senate hired its own official reporters of debate to furnish the editors of the privately published Congressional Globe with verbatim transcripts of the floor proceedings. In 1855, Congress decided to pay the Globe's reporters directly to perform this service. But with the increased congressional activity during the Civil War and Reconstruction, the Globe proved unable to publish the debates as quickly as Congress desired. Finally in 1873, the Senate and House voted to give charge of publishing their debates to the Government Printing Office. Two days later the first issue of the CONGRESSIONAL RECORD appeared, as it has for every day that Congress has met over the past 115 years.●

## HONORING RON AND WINNIE NORMAN

● Mr. LEVIN. Mr. President, on March 11, 1988, Ron and Winnie Norman of Berkley, MI, will be honored for their long and dedicated service to their community.

Ron and Winnie both grew up in Berkley, attended Berkley schools and graduated from Berkley High School. They have four children and three grandchildren.

Ron Norman served the city of Berkley for 13 years, 9 years as a member of the city council and 4 years as its mayor. Winnie put in long hours as the personal secretary to the mayor and served graciously as Berkley's first lady.

Ron and Winnie both worked at Michigan Bell and also served as officers in the Berkley Community Church. They continue to serve as members and officers of many community organizations.

I join the city of Berkley in saying thank you to Ron and Winnie Norman for their continuous good works and wish them good luck and good health in the future.●

## A REBUTTAL OF THE DOE OIL IMPORT FEE STUDY

● Mr. JOHNSTON. Mr. President, in March of 1987, the Department of Energy [DOE] released a report entitled "Energy Security: A Report to the President of the United States." The report was in response to the President Reagan's request that the Department review the nature and scope of the Nation's energy security concerns and evaluate policies that might meet national objectives in this area. The report examined the adequacy and security of all of our energy supplies, giving particular attention to oil.

One key element of the Department's report was an evaluation of the use of an oil import fee to reduce dependence on foreign supplies and encourage domestic production. DOE performed an economic analysis that attempted to quantify the costs and benefits of import fees. This cost-benefit analysis concluded that the costs of import fees far exceed the benefits. The methodology and conclusion of this part of the report were controversial from the start and were criticized by analysts in both the oil industry and academia.

Given this controversy, and my own doubts as to the objectivity of the DOE analysis, I asked Karl Hausker, the committee staff economist, to first, review the cost-benefit analysis of oil import fees presented in "energy security," and assess whether it was done in an objective and unbiased manner; second, make any changes in methodology or assumptions that would lead to a more objective appraisal of costs and benefits; and third, report any changes in the analysis or conclusions.

Dr. Hausker's report describes a number of flawed assumptions made by DOE that biases the analysis toward the conclusion that oil import fees carry far more costs than benefits. Using more defensible assumptions, the report estimates that import fees would provide positive net benefits to the Nation's economy.

I recommend this report to all my colleagues; its title is "The Costs and Benefits of Oil Import Fees: A Critique and Revision of the Analysis in the DOE Energy Security Report." It corrects a major misperception in DOE's original study. The energy security problem is one of the most difficult, tangled problems we face. This report is one step toward untangling it.

Mr. President, I ask that this report be printed in the RECORD.

The report follows:

THE COSTS AND BENEFITS OF OIL IMPORT FEES: A CRITIQUE AND REVISION OF THE ANALYSIS IN THE DOE ENERGY SECURITY REPORT

(By Karl Hausker, Staff Economist, Senate Energy and Natural Resources Committee)

OVERVIEW

In March 1987, the Department of Energy (DOE) released its Energy Security report to the President. One section of that report presents a cost-benefit analysis of three different oil import fees. In each case, the analysis concludes that the cost of the import fee would exceed the benefit. Some of the assumptions underlying DOE's analysis create a bias against oil import fees. This paper demonstrates that if one used more objective assumptions, the DOE analysis would conclude that the oil import fees would provide net economic benefits to the nation.

Any cost-benefit analysis is useful only to the extent its assumptions are realistic and defensible. In the case of the Energy Security report, the conclusion of the analysis rests largely on one very questionable assumption: the treatment of the macroeconomic "adjustment losses" associated with oil import fees. DOE assumes that there would be large, unending macro adjustment losses. This paper critiques this assumption and presents an alternative, namely, that the adjustment loss will be significant but will last only one year.

A second somewhat questionable assumption in the DOE study involves the discount rate. DOE uses a relatively high discount rate (10 percent real). The analysis presented here uses a 5 percent discount rate, a rate more in the middle of the range of rates suggested by economists.

Lastly, the DOE study performs some sensitivity analysis on the year a supply disruption occurs. The base case value is 1995; the Department also examines disruptions in 1990 for a $10 per barrel fee. This paper gives a more comprehensive analysis by examining three disruption scenarios (1988, 1991, and 1995) for three types of import fees.

This paper evaluates the costs and benefits of oil import fees using the assumption changes summarized above. The analysis is based on the same DOE computer models used in the Energy Security report. However, the Department in no way endorses the changes in assumptions or conclusions discussed in this paper.

In the section below, the DOE analysis is summarized and the importance of the treatment of macroeconomic losses is highlighted. The next section critiques the DOE methodology for estimating marcoeconomic losses and presents an alternative. We then turn to a discussion of discount rates and the timing of an oil supply disruption. The final section presents the results of the cost-benefit analysis using the specified changes in assumptions. The results are summarized in the table below. For all three fees analyzed ($5/bbl, $10/bbl, and $24/bbl variable), and for each of the three disruption years, the net benefits of a fee are positive. (The floor of the variable import fee was raised from $22 per barrel in the DOE analysis to $24 per barrel to make it consistent with Senate Bill 971.)

NET BENEFITS OF AN OIL IMPORT FEE

[Billions of 1985 dollars]

| Type of fee | Year of disruption | | |
|---|---|---|---|
| | 1988 | 1991 | 1995 |
| $5/bbl | 11.9 | 31.0 | 22.3 |
| $10/bbl | 10.3 | 41.6 | 23.8 |
| $24/bbl (variable) | 13.1 | 31.8 | 5.2 |

Computer print-outs of the DOE model (as modified by the Committee staff) appear in the Appendix to this paper. One final caveat: cost-benefit analysis should never be the sole determinant of a policy decision. Non-quantifiable benefits and costs can be equally important in shaping policy.

SUMMARY OF OIL IMPORT FEE ANALYSIS IN DOE STUDY

The DOE report Energy Security presents a cost-benefit analysis of three different oil import fees: $5 and $10 per barrel fees, and a variable fee that would create a $22 per barrel floor price. The time period of the analysis is 1988–1995. The models assumed a significant supply disruption would occur in 1995.

The two benefits of import fees estimated by the model are a reduction in the nation's payments for oil imports, and a security benefit gained from lower price and lower imports in the event of a disruption. The import fee would raise the domestic price of oil, thus lowering U.S. demand. Lowered U.S. demand would tend to lower the world price of oil because U.S. demand is such a large part of world demand. Therefore, the U.S. will pay a lower world price (plus the import fee) for its imported oil. The import fee, of course, is not a cost to the nation; it is simply a transfer from consumers to government.

The security benefits are summarized well in Energy Security (DOE 1987, p. D–17):

1. An import fee will cause the United States to enter an oil supply disruption with a lower level of imports, and consequently lower payments for imported oil during a disruption due to this lower import level.

2. If an import fee actually exerts an effect on the disrupted oil price, it would imply a lower disrupted world oil price with a fee than without a fee. If this situation occurs, an additional benefit will accrue due to this difference in disrupted price.

3. The impact of a supply disruption on the economy will be smaller because the oil import level before a supply disruption is smaller. In addition, if the import fee is waived during a supply disruption, the impact of disrupted price on GNP will be smaller.

The two costs of import fees estimated by the model are a permanent welfare loss to the economy resulting from higher domestic oil prices, and a macroeconomic adjustment loss that would result from the transition from lower to higher oil prices. The welfare loss stems from the drop in demand from higher prices: those consumers who reduce oil consumption permanently either switch to a higher-cost substitute or go without. In either case, the benefits of the lower-cost oil are lost. In contrast, those consumers who maintain their oil consumption are still getting some benefit while paying a fee to the government. Once again, those fees are not costs to the economy but simply transfers from consumers to government.

The macroeconomic adjustment loss is a transitional phenomenon: the increase in oil prices temporarily decreases aggregate spending and causes a reallocation of resources within the economy. This reallocation causes some temporary idling of capital and labor, hence the economy produces below its potential. The next section will examine macro losses in detail.

It is essential to understand the pivotal role the macro loss plays in the DOE analysis. The size of the macro loss dwarfs that of the other three components of the analysis. Its large size effectively ensures that any small variation in the estimates of the other components will not change the conclusion that import fees would be costly to the nation. The table below reveals the relative size of the macro loss and its effect on the net benefit calculation. For each of the three fees, the net benefits would be positive if not for the macro loss which swings the net benefit calculation sharply negative.

COST AND BENEFITS OF AN OIL IMPORT FEE

[Billions of 1985 dollars]

| | $5/ billions per barrel | $10/ billions per barrel | $22/ billions per barrel |
|---|---|---|---|
| Reduction in oil imports | 22.5 | 36.9 | 27.6 |
| Security benefits | 6.5 | 9.3 | 2.4 |
| Welfare loss | −2.9 | −11.3 | −6.6 |
| Net benefits Without macro loss | 26.1 | 34.9 | 23.4 |
| Macro loss | −99.3 | −188.8 | −134.8 |
| Net benefits With macro loss | −73.2 | −153.9 | −111.4 |

CRITIQUE OF DOE METHODOLOGY FOR ESTIMATING MACROECONOMIC LOSSES

DOE's calculation of the two components of benefits and of one of the two components of cost (welfare loss) is done in a straightforward and defensible manner. However, the methodology underlying the estimation of the macroeconomic adjustment loss is controversial. This is a complex issue that requires some background.

Any sudden, substantial price change can cause a macroeconomic adjustment loss. A price shock can change the distribution of income among consumers and producers and lead to a temporary reduction in aggregate spending. This can depress the overall level of economic activity.

A price change can also mean that resources must be reallocated within the economy. If oil prices go up, the price of goods ranging from gasoline to plastic wrap goes up, and the demand for these products goes down. The demand for goods such as insulation and fuel-efficient cars goes up. The output of some firms goes up, while that of other firms goes down. Capital and labor must be reallocated to bring about these changes. This reallocation cannot take place quickly or painlessly. Machines may lay unused for some time. Workers may have to move or retrain for other jobs. Decreased aggregate spending and idle economic resources mean the economy is producing below its potential, producing fewer goods and services, thus incurring a macroeconomic adjustment loss.

The DOE methodology for estimating the macro loss caused by an import fee is easy to describe. A percentage change in oil price is translated to a percentage change in gross national product by a GNP elasticity multiplier. DOE uses a multiplier of −0.021. This implies, for example, that a doubling of oil prices would lead to a 1.4% decline in GNP.

DOE draws its GNP elasticity multiplier from empirical work by Darby (1982). The Department uses Darby's estimate of a long-run (permanent) GNP elasticity multiplier despite DOE's own acknowledgement that the estimate is not statistically significant (a point we will return to later). The result of using Darby's estimate is that DOE predicts macro losses of tens of billions of dollars each year.

DOE buttresses these numbers by citing the estimates of macro losses from two elaborate computer models (the DRI Annual Model and EIA's MINMAC model). These models produce macro loss estimates of similar magnitude. DOE also cites a recent survey of macroeconomic models conducted by the Stanford University Energy Modeling Forum (EMF) as providing additional support for its use of a GNP elasticity multiplier of −0.021.

The Department's approach in estimating macro losses requires one to assume that the economy never adjusts to higher oil prices. Furthermore, DOE assumes that the import fee revenues are used to reduce the federal deficit, and that there is no fiscal or monetary policy instituted to cushion the effect of the import fee.

The Department's methodology in estimating macro losses is questionable on a number of grounds. First of all, DOE's reliance on Darby's work is puzzling, given its inconclusive nature. Darby's estimate of the long-run GNP elasticity multiplier is statistically insignificant. In other words, using conventional standards, Darby could not be confident that oil price changes had any long-run effect on GNP. In contrast, Darby's one-year, short-run estimates were significant, lending credit to the notion of a short-run macro loss. Note also that Darby examined the effect of external oil price shocks in which revenues flowed out of the consuming country. Common sense argues that import fees would have less of an impact by keeping more revenue inside the consuming country.

Another consideration is that import fees of the size contemplated in Energy Security would lead to oil prices equal to or below those levels experienced in the past. Darby's research covered the oil price shocks of the 1970s when prices climbed to unprecedented heights. However, in 1980–1981, the world oil price was above $40/bbl. In 1985, it had dropped to $27/bbl—still relatively high by today's standards. Expectations in the early 80's were that oil prices would remain in the $30/bbl range for some time and then continue escalating in the 1990's (e.g., DOE's Energy Projections to the Year 2010, 1983, p. 4–4). Five or ten dollar import fees would cause oil prices to rise to levels at or below those experienced in the first five years of this decade. Therefore, some of the economic adjustments one would otherwise expect from a oil price increase have already been made, and Darby's estimates of the impact of higher oil prices are overstated. For instance, homeowners did not remove insulation from their attics when oil prices dropped in 1986, nor did businesses mothball energy-efficient equipment purchased prior to the price collapse.

To support its position, the Department also points to the more elaborate DRI and EIA models that forecast large and long-lasting macro losses. However, the Congressional Budget Office has examined these models and reaches a very different conclusion: GNP probably would decline in the short run due to an import fee, but could be somewhat higher or lower in the long run. The CBO study concludes (1986, p. 3):

[U]nder a broad range of assumptions, the various forces tend to offset each other and it is difficult to imagine real GNP undergoing large deviations from its baseline path in the long term.

CBO questions two major assumptions in the models: first, that an oil import fee would not affect world oil prices. (This assumption was maintained in the DRI study cited in Energy Security, but not in the report itself.) Second, the models assume that the increased income of oil producers does not significantly offset the decreased income of oil consumers, hence the decrease in aggregate spending is quite large.

The third source of support for the DOE position cited in Energy Security is the Energy Modeling Forum (EMF) survey. The

survey did indeed conclude that macro losses similar to those calculated by DOE could occur if there were no fiscal or monetary policies to cushion the impact. However, the study goes on to argue that if such policies were in place the macro loss could be a small fraction of what it would otherwise be, or might be avoided altogether. Thus the bottom line of the EMF survey is that large macro losses are not an inevitable consequence of oil price rises.

EMF examined several policies that could cushion the impact of higher oil prices. In the area of monetary policy, government could allow faster growth of the money supply. In the area of fiscal policy, income taxes or payroll taxes could be cut, or an investment tax credit could be increased. These policies tend to increase aggregate consumption, investment, and/or employment. Recent actions by the Federal Reserve Board in coping with the October 1987 stock market crash illustrate the ability of monetary policy to ease the effect of an economic shock. The collapse of stock prices created a sudden surge in the demand for money to handle the huge volume of stock transactions. The Fed is widely credited with easing the money supply at the time of the crisis, and thus averting potentially larger damage to the economy (Wall Street Journal, 1987).

While the arguments above do not provide certain proof that the DOE methodology is wrong, they do establish that there is little empirical or intuitive support for the use of Darby's long-run GNP elasticity multiplier. Nevertheless, the subject of macro losses is a murky area, with plenty of disagreement among the experts. Bohi (1986, p. 2) summarizes the state of knowledge on the subject:

"[R]esearch to date has failed to yield clear evidence regarding either the importance of energy or the manner in which changes in energy prices work their influence on economic activity. The literature on this topic reveals wide differences of opinion about the effects of the oil price increases. To cite two prominent extremes, Rasche and Tatum (1981) argue that the economic upheavals of the 1970s are due entirely to energy, while Nordhaus (1980) argues that energy played almost no role. After an empirical evaluation of several possible connections, Darby (1982) concludes that the diversity of empirical results matches the diversity of opinion. Adding to the puzzle is the absence of obvious positive effects resulting from the decline of oil prices in January 1986 . . ."

Clearly, there is a range of opinion on how oil prices affect economic performance. At a bare minimum, an objective analysis of an import fee should acknowledge this range of opinion. Ideally, an objective analysis should make a balanced, middle-of-the-road assumption on the extent of macro losses. Hogan (1987, pp. 17-18) describes the range of opinion on macro losses as follows:

At one end, plausible assumptions, explicit or implicit in other studies, yield little or no cyclical macroeconomic impact of an oil tariff. For example, if the tariff is fully anticipated and the funds recycled, there need be no "surprise" and no aggregate reduction in income. In such an "accommodation" policy, the tariff revenue might be used to avoid an increase in social security taxes, and the domestic oil industry would spend its increased revenue, resulting in no increase in aggregate unemployment. . . . [At the other extreme] would be the "no accommodation" policy: leave the money supply unaffected and use the tariff revenue to reduce the deficit. The fixed money supply, coupled with the tariff-induced price increases, would maximize the recessionary effect of inflation, producing a contraction in the economy in order to reduce other prices and eliminate all or most of the aggregate price increase. . . . In this spectrum between frictionless accommodation and no accommodation, the DOE study falls towards the end of no accommodation.

DOE's assumption of virtually no accommodation policy is extremely pessimistic and introduces an unfair bias into the cost-benefit analysis, a bias against oil import fees. The CBO and EMF analyses argue strongly that macro losses can be short-run phenomenon, and can be minimized with appropriate fiscal and monetary policies (e.g., easing of the money supply, selected tax cuts). In contrast, DOE assumes a fiscal policy of deficit reduction by using import fees to decrease the Federal deficit. Thus DOE is really evaluating two policies together: oil import fees and deficit reduction. This biases the analysis against oil import fees because deficit reduction will likely cause some macroeconomic losses no matter how it is achieved, whether through spending cuts or tax increases. An unbiased analysis of an oil import fee policy cannot be performed if that policy is coupled to a second policy certain to cause macro losses.

Hogan (1987, p. 18) states this argument eloquently:

In evaluating an oil tariff, . . . tying the tariff to deficit reduction is a distraction from the evaluation of energy policy. To the degree that an oil tariff and deficit management are separable, they should be evaluated on their own merits. If an oil tariff is good, because it produces net benefits of $35 billion under a policy of accomodation, and deficit reduction is bad, because it creates $200 billion in macroeconomic loss, then adopt the tariff and live with the deficit. But don't mistake the costs of deficit reduction for the unavoidable costs of an oil tariff.

Hogan provides a thoughtful critique of DOE's macro loss estimate. He recommends that an even-handed approach would be to apply Darby's long-run GNP elasticity multiplier and assume the economy adjusts in one year. This is consistent with Darby's finding of statistically significant estimates of short-run GNP multipliers similar in magnitude to his statistically insignificant long-run estimate. Darby's long-run GNP elasticity estimate, as noted earlier, is 0.021. His four short-run estimates (corresponding to the four quarters of a year) are −0.021, −0.022, −0.009, and −0.018.

Hogan's approach assumes that appropriate fiscal and monetary policies avert some but not all of the macro loss. This treatment of macro losses is adopted in the cost-benefit analysis presented in this paper.

#### THE CHOICE OF DISCOUNT RATE

Although the macro loss estimate is the most controversial part of the Energy Security analysis, the choice of discount rate is also worth discussing. A discount rate is used to reduce the magnitude of costs and benefits occurring in the future to reflect the time value of money (i.e., a dollar today is worth more than a dollar one year from now). The bottom line of a cost-benefit analysis can vary significantly with different discount rates, particularly if the time pattern of benefits is substantially different from that of costs.

The DOE report used a real discount rate of 10 percent which is consistent with the longstanding policy of the Office of Management and Budget (OMB, 1972). However, this figure is at the high end of the range of rates that most economists recommend for use in evaluating public sector actions. Lind et al (1982) provides a thorough and wide-ranging examination of the issue of choosing a discount rate. Lind concludes that for most cost-benefit studies, a discount rate of 4.6 percent is appropriate. Lower rates, he argues, are justified in certain cases involving public investments and particularly long-lived programs. Following Lind's reasoning, a rounded rate of 5 percent (real) is used in the cost-benefit analysis presented in this paper.

#### EXPANSION OF DISRUPTION SCENARIOS

The analysis incorporated a third change to the original DOE model by expanding the number of disruption scenarios. The Committee requested that DOE run its models for disruptions in 1988, 1991, and 1995 in order to get a sense of how the cost-benefit analysis changes with the year of disruption. This kind of sensitivity analysis adds to our understanding: if the conclusion of the analysis is roughly the same regardless of the year of the disruption, we can give added weight to a policy recommendation.

#### RESULTS OF COMMITTEE STAFF ANALYSIS

So far we have reviewed the questionable assumptions in Energy Security, and presented some alternatives. This section presents the results of the cost-benefit analysis of oil import fees using the alternative assumptions. In the revised analysis, the macro loss is assumed to take place in one year rather than being permanent; the discount rate is 5 percent rather than 10 percent; and disruptions in 1988, 1991, and 1995 are analyzed.

The result is a complete turnaround from the conclusions of Energy Security. The DOE study concluded that the costs of oil import fees substantially exceeded the benefits. With the change in assumptions, the oil import fees examined are estimated to create net benefits to the nation in the tens of billions of dollars. The crucial factor in turning the analysis around is a dramatic drop in macro losses. The results are summarized in the table below; the detailed computer print-outs appear in the Appendix.

NET BENEFITS OF AN OIL IMPORT FEE

[Billions of 1985 dollars]

| Type of fee | Year of disruption | | |
|---|---|---|---|
| | 1988 | 1991 | 1995 |
| $5 billions per barrel | 11.9 | 31.0 | 22.3 |
| $10 billions per barrel | 10.3 | 41.6 | 23.8 |
| $24 billions per barrel (variable) | 13.0 | 31.8 | 5.2 |

To illustrate how the analysis changes, consider DOE's estimates for a $10 per barrel fee with a disruption in 1995. The macro loss estimate is $189 billion, welfare loss is $11 billion, total benefits are $45 billion, giving a net benefit of negative $154 billion. With a one-year macro loss assumption and a 5 percent discount rate, the macro loss drops to $24 billion, the welfare loss and total benefits increased slightly (being discounted less heavily), giving a net benefit of $23.8 billion.

A disruption in 1988 means that there are no security benefits—only a reduction in imports in later years. This is reflected in relatively low net benefits for fees when the disruption is in 1988. Note also the relatively

low benefit for a variable fee when the disruption is in 1995. This occurs because the fee drops to zero as world oil prices climb above $24 per barrel.

No cost-benefit analysis can be absolutely definitive or certain. However, this paper demonstrates that DOE used a pessimistic assumption regarding macro losses, one that allows for virtually no fiscal or monetary policies to cushion the impact of oil import fees. This assumption leads one to believe that oil imports are terribly costly to the nation. A very different conclusion is reached if one changes that assumption to a more realistic view, in which government does try to accomodate the price increase with an easing of monetary policy and/or selected tax cuts. With these more realistic assumptions, oil import fees are estimated to provide net benefits measured in the tens of billions of dollars.

As mentioned at the outset, cost-benefit analysis should never be the sole determinant of a policy decision. Non-quantifiable benefits and costs can be equally important in shaping policy. This certainly applies to oil import fees. Benefits include a more independent foreign policy, one that is not unduly influenced by our reliance on imported oil. In addition, an oil import fee will lead to a stronger, more stable domestic petroleum industry, one better able to cope with supply disruptions. Other benefits include a reduction in the U.S. trade deficit and a possible decrease in the probability of a major disruption due to lower U.S. import volumes. Non-quantifiable costs must be considered also. An oil import fee might blunt the drive to lower trading barriers in general among nations. It may also reduce the international competitiveness of certain oil-intensive U.S. products. These factors should be considered along with a fair and balanced cost-benefit analysis as the debate over import fees continues.

REFERENCES

Bohi, Douglas R., "Energy and Economic Performance: How Important Are Oil Price Shocks?", Energy and Materials Division, Resources for the Future, December 1986.

Congressional Budget Office, "Oil Taxes and the Economy," Staff Memorandum, June 1986.

Darby, Michael R., "The Price of Oil and World Inflation and Recession," *American Economic Review*, September 1982, pp. 738-751.

Energy Modeling Forum, "Macroeconomic Impacts of Energy Shocks: A Summary of the Key Results," Stanford University, Report EMF 7.2, September 1984 (Revised April 1986).

Hogan, William, "The $200 Billion Surprise: *Energy Security* and the Oil Tariff," Harvard University Energy and Environmental Policy Center, Report E-87-05, May 1987.

Lind, Robert C., et al., *Discounting for Time and Risk in Energy Policy* (Washington, DC: Resources for the Future, 1982).

Nordhaus, Willian D., "Oil and Economic Performance in Industrial Countries," Brookings Papers on Economic Activity No. 2, 1980, pp. 387-421.

Rasche, Robert F., and John Tatom, "Energy Resources and Potential GNP," *Federal Reserve Bank of St. Louis Review*, May 1982, pp. 56-61.

U.S. Department of Energy, *Energy Projections to the Year 2010*, Washington, DC, Report DOE/PE-0029/2, October 1983.

U.S. Department of Energy, *Energy Security: A Report to the President of the United States*, Washington, DC, March 1987.

U.S. Office of Management of Budget, Circular No. A-94 (Revised), Subject: Discount Rates to Be Used in Evaluating Time Distributed Costs and Benefits, March 27, 1972.

*Wall Street Journal*, "Fed's New Chairman Wins a Lot of Praise on Handling the Crash," November 25, 1987.

APPENDIX

This appendix contains a summary of the assumption changes in the DOE model made by the Senate Energy Committee staff. Following this are ten pages of model output presenting the results of the revised cost-benefit analysis. The first page presents the original DOE analysis of a $10/bbl fee (disruption in 1995). Following this are the analyses of the nine scenarios listed below:

$5 Fee—Disruption in 1988;
$10 Fee—Disruption in 1988;
$24 Nominal Floor—Disruption in 1988;
$5 Fee—Disruption in 1991;
$10 Fee—Disruption in 1991;
$24 Nominal Floor—Disruption in 1991;
$5 Fee—Disruption in 1995;
$10 Fee—Disruption in 1995; and
$24 Nominal Floor—Disruption in 1995.

SUMMARY OF ASSUMPTION CHANGES

The DOE study calculated macroeconomic adjustment losses with the following formula:

$Loss = GNP - GNP^* (P_f/P_b)^*$

Where: GNP=Gross National Product;
$P_f$=Oil price with import fee;
$P_b$=Base oil price (without fee); and
$^*$=GNP elasticity multiplier (−0.021);

Using the same approach as Hogan (1987), this study calculated macroeconomic adjustment losses with the following formula:

$Loss = GNP - GNP^* ((P_{f,t}/P_{f,t-1})/(P_{b,t}/P_{b,t-1}))^*$

Where: $_t$=current year;
$_{t-1}$=previous year

The DOE study used a real discount rate of 10 percent. This analysis used a rate of 5 percent. Three oil disruption scenarios were examined: 1988, 1991, and 1995. (DOE focuses almost exclusively on 1995.) Finally, the Committee staff examined a variable fee with a $24 per barrel floor rather than a $22 per barrel floor used in Energy Security.

[Computer print-outs omitted. They appear in "The Costs and Benefits of Oil Import Fees: A Critique and Revision of the Analysis in the DOE Energy Security Report," Printed at the Request of the Committee on Energy and Natural Resources, United States Senate, 100th Congress, 2d Session, S. Prt. 100-85, March 1988.]●

## UNITED STATES-JAPAN SECURITY RELATIONS

● Mr. ROCKEFELLER. Mr. President, the winter, 1988, issue of the Fletcher Forum is entitled "The U.S.-Japan Trade and Security Relationship." That issue contains an article by Gregg Rubinstein on "U.S.-Japan Security Relations" which outlines in a succinct way the history of our security relationship and tries to correct misperceptions about the positive contributions Japan has made as one of our most important allies. I recommend Mr. Rubinstein's article to any serious student of Japan.

Mr. President, I ask that the full text of this article be included in the RECORD.

The article follows:

U.S.-JAPAN SECURITY RELATIONS: A MATURING PARTNERSHIP?

(By Gregg A. Rubinstein)

Much has been written in recent years of a transition in the United States' relations with Japan. Some observers have seen the emergence of a U.S.-Japan alliance or "equal partnership." Others have taken a more negative approach in warning of the end of an indulgent American view of Japan and insisting that Japan assume international responsibilities commensurate with its wealth and power. These arguments are variation of the same theme—the ending of a post-wear generation of U.S. patronage and Japanese dependence.

As other articles on this issue make clear, this change in perspective is all too contentiously evident in economic issues. Less attention has been given to an equally important trend in U.S.-Japan relations, the evolution of what was for many years a static security relationship toward more active defense cooperation. On the whole a very positive development, security relations must continue to overcome the misunderstandings and tensions that mark a shift from the patron-client attitudes of earlier years to a more mature partnership appropriate to the 1980s and 90s.

EVOLUTION OF THE SECURITY RELATIONSHIP

Security arrangements developed during the early post-war period were finalized in the 1960 U.S.-Japan Treaty of Mutual Cooperation and Security. The Security Treaty remains the framework of U.S.-Japan security relations; its key provisions are:

Article V: Each Party recognizes that an armed attack against either party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes . . .

Article VI: For the purposes of contributing to the security of Japan and the maintenance of international peace and security in the Far East, the United States of America is granted the use by its land, air and naval forces of facilities and areas in Japan . . .[1]

Implementation of Security Treaty provisions during the 1960s reflected America's position as the preeminent Asia/Pacific power. Japan's contribution to mutual security was seen—in both countries—primarily as the provision of a base from which U.S. forces could ensure regional stability and in so doing protect Japan. Most problems in the security relationship focused on U.S. bases in Japan, the presence of which was a source of constant political tension. In the strongly anti-military atmosphere of early postwar Japan, concern with Japan's fledgling Self Defense Forces (SDF) centered more on their political legitimacy than their operational effectiveness. While U.S. and Japanese military counterparts established close relations, joint planning for U.S.-Japan cooperation in an emergency was seldom given serious attention by civilian superiors. Japanese officials were reluctant to face military issues and their American counterparts generally did not press them to do so.

The end of the Vietnam War, the reversion of Okinawa to Japanese sovereignty in 1972, and an extensive reduction of U.S. military facilities throughout Japan in the early 1970s greatly eased the burden of U.S.

Footnotes at end of article.

base problems. U.S.-Japan security relations had entered a period of relative calm. The lull of the detente years, improved relations with China, America's Nixon Doctrine-inspired disengagement from post-Vietnam Asia, and the absence of any apparent threat to Japan all tended to lower the priority of defense issues in U.S.-Japan concerns. An emphasis on management of Security Treaty-related operations over concern with defense policy continued well into the Carter administration.

The low-key nature of U.S.-Japan security relations finally shifted in the wake of the Iranian revolution and the Soviet invasion of Afghanistan in December 1979. Faced with suddenly expanded defense commitments, major increases in Soviet military capabilities, and what had become a steadily shrinking base of American military resources, Washington began calling on its allies for greater contributions to common security concerns. In the case of Japan, providing a base for U.S. operations was no longer enough. Increasing U.S. trade deficits with Japan reinforced the perception among many Washington officials and members of Congress that, by allocating less than one percent of its GNP to defense, Japan was getting a "free ride" on security from the United States. Japan had to "do more" to share the defense burden. But what did this mean? Washington still lacked a conceptual approach to defense cooperation with Japan. This being the case, pressing Japan for more defense spending without a clear understanding of how these funds were to be used soon proved a pointless and aggravating exercise.

ROLES AND MISSIONS

A few weeks after President Reagan's inauguration, then Secretary of Defense Caspar Weinberger stated that a rational division of labor among the United States, NATO allies, and Japan would be a central theme of U.S. defense policy. Administration officials were determined to avoid confrontations over percentage increases in allies' defense budgets. Rather, necessary expenditures were to be encouraged through an agreed allocation of defense tasks—a concept of "rules and missions." [2] The United States outlined a roles and missions approach to Japanese officials in early 1981. Washington's position emphasized that:

The United States would continue to provide a credible nuclear deterrent as well as offensive strike forces in the Northwest Pacific—capabilities that Japan is constrained from developing itself;

Japan should strengthen its defense forces to assume primary responsibility for the security of its territory, coastal waters, and airspace, as well as protect economically vital sea lanes out to some 1,000 miles from its major Pacific ports;

The United States would maintain its security commitment to the Republic of Korea and protect sea lanes beyond the Northwest Pacific critical to Japan's security (e.g. oil lifelines).

This proposed policy was formalized in a joint communique issued following talks between President Reagan and then Prime Minister Suzuki in May, 1981.[3] There may have been nothing original in the substance of roles and missions—experts in both countries had long understood the need for some such allocation of defense responsibilities—but this more dynamic approach to security relations had never before been the subject of public agreement between American and Japanese political leaders. Significantly, it was here that the word "alliance" was first used officially to describe U.S.-Japan ties.

Though Tokyo accepted the roles and missions concept in principle, initial Japanese reactions to an increased defense effort were hesitant and skeptical. The controversial nature of military issues in Japan and a sense of complacency drawn from many years of stability in Northeast Asia underlay a widespread reluctance among the Japanese to assume a stronger defense posture. Nonetheless, growing Soviet military strength in the Far East, truculent Soviet behavior toward Japan, and continued turmoil in Southeast Asia and the Middle East have all prompted a more sober view of security problems in Japan and encouraged a greater willingness to identify Japan's interests with those of a Western alliance. Despite differences in thinking on many security issues, Japan has gradually become more responsive to the need for strengthened defense ties with the United States.

The intent of the roles and missions rationale has often been misunderstood by critics in both countries. In advocating increased Japanese defense capabilities, neither Washington nor Tokyo intend that Japan somehow substitute for U.S. forces in Northeast Asia or become an independent regional power potentially threatening to its neighbors. The issue is one of complementarity rather than substitution. Greater Japanese defense efforts would make no sense unless strong U.S. forces were available to work with Japan in meeting Soviet threats close to home as well as maintain those security commitments beyond the Northwest Pacific that Japan is not in a position to undertake. The point is that U.S. resources are needed for U.S. tasks. They cannot be stretched to cover what should be Japanese missions (such as escort of merchant shipping). Thus, defense cooperation is not a zero-sum game between the United States and Japan. Japan is not "doing more" so that the United States can do less. Both countries have had to do more to meet their responsibilities.

IMPLEMENTING DEFENSE COOPERATION

Implementation of the roles and missions policy has depended on both improved Japanese defense capabilities and closer U.S.-Japan cooperation. Current activities are mostly a continuation of programs in effect prior to 1980, but with increasingly tangible benefits that, again, are not fully appreciated in either country.

*Host Nation Support (HNS)*

Japan's Security Treaty obligation to provide facilities for U.S. forces amounts to much more than leasing property. Since the 1960s, the Japanese government has also provided financial support for the operation of U.S. bases in Japan. At first limited to the construction of housing and other service facilities, the scope of HNS has been widened to include contributions to offset the rising cost of Japanese labor on U.S. bases and, since 1979, the construction of operational facilities (e.g. aircraft hangars) as well. At current exchange rates, Japan's contribution to HNS amounts to more than $1.5 billion per year.[4]

American bases in Japan serve U.S. interests at least as much as Japan's. The bases represent the U.S. commitment to Japan's security, but they are also indispensable to U.S. deployments in the Asia/Pacific region. Even as U.S. facilities face reduction or closure elsewhere, Japan has authorized (and helped pay for) a major expansion of U.S. forces at Misawa Airforce Base. Critics who have advocated the withdrawal of U.S. forces from Japan over trade problems and Japan's perceived free ride on defense would do well to consider this Japanese support for U.S. strategy. (Compare the situation in the Philippines, where the tenure of our bases has depended on our payment of hundreds of millions of dollars in "aid" since 1981. What will the price be for the United States to remain beyond the end of the current Philippines Base Agreement in 1991—assuming that we are allowed to remain at all?)

*Joint Military Planning and Training*

Since the 1960s senior American and Japanese officials have held periodic consultations through various committees established under the Mutual Security Treaty. However, though the Security Treaty commits the U.S. and Japanese forces to joint action in meeting a threat to Japan, detailed planning to handle such contingencies did not begin until the conclusion of "Guidelines for U.S.-Japan Defense Cooperation" in 1978.[5] Planning discussions focused first on measures in response to a direct attack on Japan. Subsequent studies were directed to sea lane defense and to what degree of cooperation would be appropriate in meeting various regional contingencies. As is perhaps true of most planning efforts, it is not the resulting plans per se, but the planning process itself that is of greater value in providing each side with a more realistic perception of the other's capabilities.

Developments in military planning have been matched by steady growth in the frequency and scope of joint military training. Confined for many years to small-scale (and generally unpublicized) naval maneuvers, U.S.-Japan exercises now include joint training by air and ground as well as naval forces. A further step was taken in 1986 when the United States and Japan held their first combined (all services) exercise. Japan's increasingly high profile participation in the U.S. Pacific Fleet's bi-annual RIMPAC maneuvers has become a significant indicator of progress in U.S.-Japan defense cooperation.[6]

*Defense Sales and Coproduction*

Under the Mutual Defense Assistance Agreement of 1954, the United States has been Japan's primary source of advanced defense equipment. Originally delivered as military aid, U.S. defense systems have since the 1960s been transferred to Japan through both government and commerical sales as well as license production programs. Japan has continued to purchase such advanced U.S. systems as the E-2C early warning radar aircraft, the HARPOON anti-shipping missile and the PHALANX anti-missile cannon. Initial funds for what will become an almost $1 billion purchase of the AEGIS naval air defense system are included in Japan's proposed 1988 defense budget. Current coproduction programs include the F-15 fighter, P-3C anti-submarine patrol aircraft, and a number of air defense missiles.

Japan's coproduction of American defense systems has often been criticized in the United States over cost-effectiveness (it costs more to coproduce small. numbers of a system in Japan than to buy off the U.S. line), the trade balance, and technology transfers to Japan through licenses that are potentially damaging to U.S. competitiveness.[7] For their part, the Japanese have had both strategic and economic interests in building up a defense industrial base. Domestic interests have often complained that U.S. sales and coproduction agreements

have withheld vital technology from Japan and they have thus pressed for development of indigenous systems rather than adoption of U.S. equipment.

While each coproduction arrangement must be examined on its own merits, such projects have often presented the best compromise between U.S. and Japanese interests. A flexible approach to coproduction allows Japan to acquire a degree of experience and self-sufficiency in defense production while at the same time promoting interoperability with the United States and often discouraging redundant efforts at indigenous development.

*Technology Transfers*

Until recently the flow of defense equipment and technology was almost entirely one-way from the United States to Japan. However, by the late 1970s U.S. defense officials had become interested in obtaining access to Japan's rapidly growing technological capabilities. This interest led to the establishment in 1980 of the Systems and Technology Forum between the U.S. Defense Department (DOD) and the Japan Defense Agency (JDA) to promote cooperative efforts in developing defense technologies. Despite this gesture of good intent, transfers of Japanese defense technology were still blocked by Japanese policy banning arms exports.[8] Stressing the incompatibility of this position with efforts to broaden defense burden-sharing, Washington pressed Tokyo to make technology transfers to the United States an exception to Japan's weapons export restrictions. Japan's eventual agreement to do so is embodied in a 1983 Exchange of Notes on "Transfer of Japanese Military Technologies to the United States."[9]

Since conclusion of the Notes, DOD has sponsored several teams to study Japanese technologies and concluded negotiations on the first technology transfers to the United States. More importantly, the United States and Japan have agreed on terms covering potential Japanese participation in SDI programs.[10] Despite such measures, there is little to show thus far for defense technology cooperation. This has partly been due to bureaucratic complications on both sides, but also reflects a continued reluctance by many government and industry officials in the United States as well as Japan to enter a previously unexplored area of collaboration and risk the sharing of advance technologies. Nonetheless, the legal and bureaucratic framework for defense technology cooperation is now largely in place. The potential value of projects that could lead beyond simple transfers of data to joint research and development is enormous. It remains to be seen whether the United States and Japan are sufficiently committed to pursue such opportunities.

*Economic Aid*

Japan's approach to security burden-sharing has covered not only defense, but political and economic measures. Most significant among these is overseas development assistance (ODA). Through the 1970s, Japanese ODA was largely confined to the Asia/Pacific region and usually tied to the purchase of Japanese goods and services. Since the 1980s, Japan has substantially increased its ODA budget ($5.6 billion in 1987, the world's second largest), expanded the proportion of untied assistance, and targeted more funds to countries of strategic importance outside the Pacific region (e.g., Egypt and Pakistan).[11]

Japanese ODA has, in other words, become the economic counterpart of the roles and missions concept, a significant but non-threatening contribution to global security. Some Japanese have been unhappy with the shift from a strictly "North-South" to more of an "East-West" focus in ODA disbursements, while others hoped that increased ODA could somehow substitute for defense spending. While Japan's ODA and defense spending are complementary, they are not interchangeable. Despite its size, Japan's ODA budget is still around 0.3 percent of GNP; this can be raised without having an impact on necessary defense expenditures. The Japanese government has already committed itself to doubling its 1985 ODA disbursements by 1990 and recently announced a $30 billion plan to recycle part of its current account surplus to developing countries.

JAPAN'S DEFENSE CAPABILITIES—HOW MUCH IS ENOUGH?

*Evolution of the Self Defense Forces*

Reflecting both U.S. Occupation policy and political sentiments of the immediate postwar period, Article 9 of Japan's Constitution renounces war as an instrument of state and forbids the maintenance of military forces. However, even before the end of the Occupation period, both the U.S. and Japanese governments had concluded that Japan needed armed forces for self-defense, and that such "self-defense forces" would not be incompatible with the provisions of Japan's Constitution.[12]

This policy allowed the creation of the Japan Defense Agency and the Japan Self Defense Forces (SDF) in 1954. Japan adopted a "Basic Policy for National Defense" in 1957 and embarked on a series of four Defense Build-up Plans covering the years 1958 to 1976. Under the Basic Policy's vague directive "to develop progressively the effective defense capability necessary for self-defense, with due regard to the nation's resources and the prevailing domestic situation," the SDF accumulated a substantial amount of hardware, but had little in the way of strategic rationale for its employment.[13]

In 1976 the Japanese government attempted to define such a rationale in its National Defense Program Outline. Assuming a world in which superpower equilibrium made the outbreak of full scale war unlikely, the Outline justified the existence of defense forces capable of dealing with "limited and small-scale aggression" while relying on the Mutual Security Treaty with the United States to meet greater threats. The Outline also stipulated the "minimum necessary level" of defense forces needed by Japan, with emphasis on qualitative improvements rather than quantitative expansion. The JDA is to meet Outline force levels through successive five-year procurement programs known as Mid-Term Defense Plans. It was also at this time that the Japanese government announced its intent of reaching Outline goals with defense budgets that were not to exceed one percent of Japan's GNP.[14]

Together with the Mutual Security Treaty, the Outline and Mid-term Plans are the basic instruments of Japan's defense policy. A product of the détente years, the Outline not only assumed that a general war was unlikely, but reflected a widespread Japanese belief that the SDF would not need to fight in the foreseeable future. Indeed, for many years domestic critics repeatedly challenged the constitutional legitimacy of the SDF and Japan's defense forces were obliged to assume a very low public profile. Only recently have they and the JDA attained a respectable standing in Japanese government and society.

Japan's defense capabilities appear impressive on paper. Much has been written, in both praise and fear, about the SDF's quantities of army divisions, ships and aircraft. Even within one percent of GNP, Japan's defense budget is one of the world's ten largest (at current exchange rates, Japan's 1987 defense budget of $23 billion almost equals that of Britain, France, or West Germany).[15] However, tables of equipment and budget figures are not necessarily indicators of real strength. Having lacked firm political backing and a clearly perceived incentive for readiness, Japan's defense forces have been handicapped by major deficiencies in infrastructure, logistics, communications, and realistic training. There has been good reason to doubt whether the SDF could fulfill even the modest expectations of the National Defense Outline.

Since 1980 a more serious approach to security issues in Japan and a closer defense cooperation with the United States have encouraged a gradual improvement in the SDF's situation. Japan's defense forces have benefited from the acquisition of advanced equipment and, of equal importance, from increased attention to logistics, training, and inter-service coordination necessary to put these new systems to effective use. Within the next five to 10 years the SDF may in practice as well as principle be able to thwart preemptive air attacks, block Soviet access to the Pacific through the straits between Japan's islands, help to protect economic lifelines in the Northwest Pacific, and thus become a true asset to the U.S.-Japan alliance.

*The One Percent Trauma*

Upon its announcement in 1976, the Japanese government's policy of keeping defense budgets within one percent of GNP became a political touchstone for domestic opponents of increased Japanese defense efforts and, conversely, "free ride" critics in the United States. By the early 1980s, it was clear that in a period of low economic growth, Japan could not hope to meet the procurement goals of its Mid-term Defense Plans without budget increases that would eventually cross the arbitrary one percent line. Still, so sensitive had the issue become in Japanese politics that even the relatively pro-defense Prime Minister Nakasone felt it necessary to postpone the one percent reckoning for as long as possible.

The other shoe finally dropped late last year when the Japanese Cabinet approved a fiscal 1987 defense budget that placed expenditures at 1.004 percent of GNP. After considering various formulas to replace the one percent barrier, Tokyo decided to use the attainment of Japan's current (1986-90) Mid-term Defense Plan as a ceiling for defense spending.[16]

The end of the one percent era does not presage a rapid expansion of Japanese military power. A combination of low economic growth, political sentiment, and a government policy of fiscal austerity in effect since the late 1970s would have ensured no more than a modest increase in recent defense spending whether a one percent policy had been in effect or not. For the foreseeable future, these same factors should continue to govern a slow but steady growth in defense budgets to meet the goals of the present and follow-on Mid-term Plans.

*Regional Considerations*

Criticism of increase Japanese defense efforts dwells not only on fiscal constraints and political problems in Japan, but on the sensitivities of Japan's neighbors to any perceived resurgence of Japanese militarism. There is certainly some truth in such assertions. Countries that experienced the consequences of expansionist Japanese policies in the 1930s and 40s (and face unequal trade relationships with Japan today) are predictably wary of any developments that suggest a major Japanese military presence in the Asia/Pacific region. Feelings between Japan and South Korea, for example, are such that direct defense cooperation, however strategically advantageous, remains politically unapproachable in either country.[17]

Despite such misgivings, Korea, Taiwan, the ASEAN nations, Australia, and even the PRC have largely accepted a more credible defense posture for Japan as a barrier to Soviet expansion. As long as Japan's military capabilities remain limited to defense in the Northwest Pacific and dependent on close cooperation with the United States, Japan's neighbors are not likely to sense a threat to regional stability from Tokyo.

DEFENSE AND TRADE—LINKED AFTER ALL

In parallel with the concept of roles and missions, recent U.S. defense policy toward Japan has emphasized a strict separation of security issues from trade frictions. There is much sense to this separation—the trade balance does not determine the need for increased Japanese defense capabilities, while a greater Japanese defense effort would not affect most trade problems. Nonetheless, attempts to isolate defense from other aspects of U.S.-Japan interactions are increasingly at variance with political realities.

As a recent Japan Economic Institute study shows, there has been an interplay of defense and economic considerations in U.S.-Japan relations throughout the postwar period.[18] During and immediately after the Occupation, Washington strongly supported Japan's decision to emphasize economic recovery over defense concerns. By the 1960s Japan's rapid economic growth justified the end of what had been substantial U.S. military aid. Calls for Japan to make a greater contribution to common security interests were first heard as a reaction to the mounting costs of the Vietnam War.

It was with the escalation of serious trade problems in the late 1970s that "free ride" criticisms of Japanese defense efforts became popular in Washington. Numerous Congressional resolutions were introduced over the next several years in an effort to pry more defense funds from Japan. None directly affected Tokyo's actions, but collectively they made a telling point. While Japan has shown a more positive approach to strengthening its defense capabilities, there is little doubt that Japanese defense budgets have taken U.S. trade concerns into account.

Nowhere do defense and trade issues coincide more clearly than on defense industrial and technology transfer programs. Coproduction and technology cooperation agreements will be subject to increasingly critical scrutiny as the United States and Japan interact in a growing number of advanced technology fields. Despite numerous agreements on particular programs, the Pentagon has yet to announce a general policy supporting defense industrial cooperation with Japan. The danger in such ambiguity is underscored by three recent incidents that demonstrate the convergence of defense and economic interests in security relations:

*Fujitsu-Fairchild:* An attempt earlier last year by Fujitsu to acquire Fairchild Semiconductor Corporation was opposed by the Pentagon on grounds of national security.[19] Defense Department concern over foreign control of a major U.S. semiconductor maker may or may not have been well-founded (though interestingly, the issue never arose during Fairchild's ownership by the French firm Schulmberger Ltd.). However, it has appeared to contradict other Pentagon efforts to draw Japan into closer technology relations.

*Toshiba:* Toshiba Machine Company's sale to the Soviet Union of sophisticated milling machinery has become a major knot in both trade and security relations. The incident has done much to jolt Tokyo out of its lax posture toward oversight of strategic exports under COCOM (Coordination Committee for Export Controls), and Japan has already enacted measures to tighten its administration of export control laws.[20] The United States may also be in a position to renew its long-standing campaign for a formal agreement with Japan covering the security of defense information. This has so far been beyond reach because of Japanese sensitivities over enacting stricter espionage laws claimed to be necessary for their adherence to such an agreement. As long as this issue remains open, it will encourage doubts over Japan's ability to protect sensitive information and thus impede further defense cooperation.

*FSX:* More than two years ago, Washington and Tokyo began discussing Japan's planned procurement of a new "support fighter" aircraft (FSX). The Pentagon emphasized cost-effectiveness, inter-operability, and trade concerns in pressing for use of a U.S.-derived aircraft. But Japanese officials, sympathetic to inflated claims that Japanese industry could develop the FSX with little or no foreign assistance, rejected U.S. proposals as inadequate for a turn-of-the-century aircraft. Tensions mounted as Washington, stung by Congressional pressure, made agreement to buy American on the FSX a litmus test of the security relationship. After months of indecision, Japan announced last October that it would adopt a modified version of the U.S. F-16 aircraft for the FSX.[21]

U.S. defense officials have praised this decision for its strategic and economic soundness, but Japan's concession on FSX was primarily a gesture to trade pressures. Though one can still argue that trade and defense concerns should be separate in principle, the FSX confrontation has done much to undermine the credibility of such assertions. At best, a U.S.-Japan effort to develop an advanced F-16 can still set a precedent for future defense technology projects—without the rancor that has marked the FSX.

FUTURE TRENDS

The use of the term "U.S.-Japan Alliance" during the 1981 Reagan-Suzuki Summit was at the time considered so extraordinary that it caused a media sensation and prompted questions in the Japanese Diet. That those words are today commonplace is in itself a tribute to the positive development of the U.S.-Japan security relationship. Could Japan have done more, faster? Could the United States have been more adroit in dealing with Japan? The answer is probably yes to both questions, but the roles and missions approach has on the whole worked well. Some critics of this concept continue to argue for major increases in Japanese military capabilities that would end the "free ride" and relieve the United States of much of its burden in the Asia/Pacific region. Others fear that any strengthening of Tokyo's defense posture risks unleashing the demons of Japanese militarism.[22]

Glib presentations can be made for both these points of view, but neither reflects reality. The roles and missions approach to burden-sharing may be unexciting in its reliance on evolutionary measures, but the result has been an increase in Japan's contribution to common security interests that has benefited both countries and still poses no plausible threat to Japan's neighbors. The alternatives—the illusion of "unarmed neutrality" for Japan, the prospect of "armed neutrality" with Japan acting independently of the United States, a loss of U.S. strength in the region and perhaps a gain in Soviet influence—can hardly be seen as beneficial to a stable Asia/Pacific community.

Some elements of the U.S.-Japan security framework have had to change to meet new conditions (one percent of GNP, transfers of military technology, etc.) and others may have to be altered over the next few years. Still, in general the policies and agreements that underlie U.S.-Japan security relations have proven adaptable to changing circumstances. Based on them, security burden-sharing can continue to evolve in a manner favorable to both the United States and Japan in the following areas:

*Japanese Defense Forces*

There has been discussion of revising the SDF structure presented in Japan's 1976 Defense Program Outline (particularly in some categories of naval and air strength), but SDF improvements will continue to be more qualitative than quantitative. The priorities of the present (1986-90) Mid-term Defense Plan will most likely be reflected in its 1991-95 successor—air defense, anti-submarine warfare, increased ground force mobility, and improvements in communications and logistics. With comparable developments in planning and training, the SDF will at last become an effective instrument of security policy. Japanese defense budgets needed to meet these goals will exceed one percent of GNP, but probably stay within 1.5 percent. American critics mesmerized by GNP percentages should consider what military strength Japan might obtain at some higher, arbitrarily defined percentage of GNP—and whether such capability would truly be in the interest of the region or the United States. Perhaps those funds would be better spent on economic aid and support for international peace-keeping operations.

*Facilitative Assistance*

An example of the ways in which Japan can provide more support for U.S. defense commitments can be seen in Japan's recent announcement of measures to assist Persian Gulf deployments:

Japan's purchase of a sophisticated land-based navigation system to support Gulf shipping; increased ODA to friendly Middle East states (Oman and Jordan); financial contributions to UN peace-keeping operations; and more Host Nation Support for U.S. forces in Japan. Japan can continue to raise the levels of cost-sharing for labor expense and facilities construction on U.S. bases. If necessary to achieve this, both countries should be prepared to renegotiate the cost-sharing provisions of the Status of Forces Agreement that has covered the operation of U.S. bases in Japan. Japanese

ODA should not only increase, but give more emphasis to grant aid rather than loans. Strategic considerations are now more important than trade benefits.

*Defense Industry/Technology Cooperation*

This is potentially one of the most productive areas of defense cooperation, but so far it has been the least developed. The Pentagon should publicly clarify its commitment to industrial cooperation with its key Pacific ally and pursue technology programs with greater vigor and consistency. Japanese officials must be less defensive in their response to such initiatives. Japan is becoming able to contribute vital technologies to future U.S. defense programs, and continued Japanese access to advanced U.S. technologies will increasingly depend on their willingness to reciprocate. Japan's recent SDI agreement with the United States as well as congressionally supported efforts to fund joint defense research and development programs offer real incentives to improve defense industrial ties. Such "positive linkage" of defense and economic issues can do much to offset the trade-related pressures that increasingly threaten U.S.-Japan security relations.[23]

The area of defense cooperation that may most need improvement is also the least tangible—that of attitudes and assumptions. Over the past 10 years the United States and Japan have undergone a wrenching adjustment in economic relations. Whatever the outcome of various trade and monetary issues, it seems clear that the patron-client attitudes formed in the early postwar years have largely been supplanted by a more realistic appreciation of cooperation and competition. However reluctantly, the United States and Japan are starting to deal as economic equals who find it increasingly implausible to blame each other for their problems and mistakes.

The security relationship has yet to complete this transition. No one who has experienced the ritualistic process of U.S.-Japan security consultations or the posturing over Japan's defense budgets can be but struck by the persistence of patron-client attitudes on both sides. Though the situation has improved in recent years, the Japanese government still finds it necessary to cite (and even solicit) U.S. pressure to justify any potentially controversial development in security policy. The formulation of Japan's annual defesne budgets seems incomplete without an elaborate Tokyo-Washington minute to determine what percentage increase will suffice to appease the Americans for another year. For their part, U.S. defense officials are quick to dispense guidance and blessings for each step that their Japanese counterparts take—even when, as happened with the FSX, such guidance degenerates into blatant arm-twisting.

Such conduct belies pretensions of equality in an alliance. Some degree of patron-client interaction may have been necessary to move the United States and Japan toward closer defense cooperation, but this pattern of behavior is no longer appropriate or helpful. The Japanese government should be able to articulate and implement a sound defense policy without leaning on (or blaming) the United States. While allies must consult closely, U.S. defense officials no longer need—nor should expect—to lead and push their Japanese colleagues to the degree to which they are still accustomed. It is increasingly unlikely that measures perceived as being derived from such pressure will be accepted in Japan.

The United States and Japan have managed to resolve most of the legal and political problems that have constrained their defense cooperation to date. Despite continuing and inevitable economic friction, U.S.-Japan security relations rest on a more solid foundation than ever before. Both countries can afford to leave postwar attitudes behind; only by doing so will the U.S.-Japan alliance become a mature partnership.

FOOTNOTES

Gregg A. Rubinstein is Director of Policy and Planning at Grumman International, Inc.

[1] For full text, see Japan Defense Agency, *Defense of Japan* 1986 (Tokyo: The Japan Times Ltd., 1986), pp. 262-64.

[2] Caspar Weinberger, testimony before the Senate Armed Services Committee, March 4, 1981. For a recent official statement of U.S. defense policy toward Japan see Richard L. Armitage, "The US.-Japan Alliance," *Defense* 86 (July/August), pp. 20-22.

[3] *Defense of Japan*, pp. 326-27.

[4] *Ibid.*, pp. 187-90.

[5] *Ibid.*, pp. 87-89 and 265-69.

[6] *Ibid.*, pp. 175-79.

[7] For example, see U.S. Government Printing Office, *U.S. Military Coproduction Programs Assist Japan in Developing its Civil Aircraft Industry* ID-82-23, 13-205192 (Washington, D.C.: USGAO, 1982).

[8] Announced in 1967, Japan's Three Principles on Arms Exports restrict arms sales to 1) Soviet Bloc nations; 2) countries under UN sanctions; 3) countries at war or likely to become involved in war. A stricter interpretation since 1976 in effect precludes all military exports. See *Defense of Japan*, p. 181.

[9] For texts of the Notes and subsequent implementing arrangements see U.S. Department of Defense (OUSDRE/IPT) *Japan Military Technology: Procedures for Transfers to the United States* (Washington, D.C.: USGPO, 1986).

[10] *Defense News*, 27 July 1987, p. 8.

[11] Japan Economic Institute, *Japan's Foreign Aid Policy: 1986 Update* No. 41A, 1987, pp. 3-7.

[12] *Defense of Japan*, pp. 72-73.

[13] *Ibid.*, pp. 73-74.

[14] *Ibid.*, pp. 77-83.

[15] See International Institute of Strategic Studies, *The Military Balance 1986-87*, (London: Institute of Strategic Studies, 1986) for comparative figures.

[16] Japan Economic Institute, *Japan's Defense Policies in the Post-One Percent Era* No. 18A, 1987, pp. 3-6.

[17] There have been some low-profile security consultations between Japanese and Korean officials as well as indirect participation in joint U.S. exercises, but as yet no serious consideration of more open cooperation.

[18] Japan Economic Institute, *The Trade-Defense Linkage* No. 35A, 1987.

[19] *Washington Post*, 30 March 1987, p. A1.

[20] *Wall Street Journal*, 31 July 1987, p. 8.

[21] See Japan Economic Institute, *JEI Report* No. 38B, 1987, pp. 1-2 and Gregg A. Rubinstein, "FSX: The Benefits of Codevelopment" in *Defense News*, 19 January 1987, p. 32 for details.

[22] Recent examples of these two approaches are Edward A. Olsen, *U.S.-Japan Strategic Reciprocity* (Stanford, California: Hoover Institution Press, 1985) Malcolm McIntosh, *Japan Rearmed* (New York: St. Martin's Press, 1986).

[23] The author has addressed these issues at greater length in "Guidelines for Increased U.S.-Japan Defense Technology Cooperation," Heritage Foundation Asian Studies Center *Backgrounder* No. 70, October 26, 1987.●

## PUEBLO, CO

● Mr. ARMSTRONG. Mr. President, an announcement today confirmed something that many of us have known for a long time: Pueblo, CO is a great place to live.

Mr. President, today, an exhaustive study by the University of Kentucky has ranked Pueblo County the best place to live out of 253 urban counties nationwide.

The study focused on three categories—urban conditions, climate, and environment—and gave Pueblo very high marks for all three.

The quality-of-life experts speculated that their study might influence businesses considering moving to other places; I think it will and it should. Pueblo's got a great story to tell, and more and more smart businessmen are listening to the tale of how a city got together and pulled itself up to become No. 1.

THINGS LOOKED GRIM

In 1974, the Army cut back 2,000 jobs at the Pueblo Army Depot, it was the first jolt to Pueblo's economy. As the 1980's began, Pueblo was feeling the effect of big steel's collapse.

In 3 years, from 1979 to 1982, unemployment soared to 18.9 percent 9,584 people were out of a job, in a community of less than 51,000 people. Unemployment finally peaked at 24 percent in 1984; 17,000 jobs had been lost since 1965. That is when civic pride and tough determination took over.

THE TURNAROUND

The people of Pueblo got together and, in a classic case of hard work paying off, they turned their city around. They formed the Pueblo Economic Development Corp., as a small business incubator and began to beat the drums to let people know Pueblo was open for business. There was a new spirit of cooperation in the air and you could just feel the sense of new optimism that it inspired.

Here's just one example that I like to quote. When the Colorado State Fair in Pueblo needed two new 4-H dormitories, Puebloans by the hundreds showed up to build them, all with locally donated materials and all in one weekend.

NEW BUSINESSES AND NEW JOBS

New businesses moved to Pueblo and that meant new jobs. Eighteen companies have moved operations to Pueblo, bringing 4,400 new jobs when they are all up to speed. Those managers have made a $500 million investment in Pueblo and its people.

Today, people come to Pueblo and ask with amazement: "How did you ever do it?" They want to know Pueblo's secret of success. Others come to Pueblo just because it is such a special place to live. Puebloans have always felt their town was No. 1. And now the rest of the country also knows it's No. 1. I say: "Congratulations to Pueblo on a job well done."●

## UNITED STATES/JAPAN NUCLEAR AGREEMENT

● Mr. GLENN Mr. President, the United States and Japan have had a long and productive history of cooperation on the peaceful uses of nuclear energy, a relationship governed by a

20-year-old agreement that doesn't expire until early in the 21st century.

Under this agreement and the Atomic Energy Act, the United States has a right to approve Japanese requests to make various uses of the nuclear materials that we export to Japan—such as the alteration, reprocessing, or retransferring of nuclear fuel, and the enrichment of uranium. Such approvals are issued only after interagency reviews of the facts in specific cases—including physical security threats—and a 15-day review by Congress.

Why do we have these rights? Because the materials involved are the stuff nuclear weapons are made of, an inviting target for terrorists, and an extreme hazard to the environment. Very simply put, our national security interests and just plain common sense require such prudent controls.

THE CASE-BY-CASE REVIEW PROCESS

Over the last 7 years, this review process has worked remarkably well in promoting nuclear cooperation with responsible nations, without undercutting our security interests. To illustrate the predicability of this review process, the United States has never turned down such a request by Japan. Indeed, on 1 day early last month, the United States authorized Japan—after an interagency review of 14 separate proposed shipments—to ship over 16,000 pounds of plutonium contained in United States origin spent fuel to Europe for reprocessing.

We simply don't need to sacrifice our security reviews to continue the expeditious processing of these Japanese requests. Indeed, I have always supported the transfer of sufficient plutonium to Japan for testing the economics of plutonium use in appropriately protected, small scale R&D facilities.

PROPOSED REVISION OF UNITED STATES/JAPAN NUCLEAR AGREEMENT

Last November, however, the President sent to Congress a major revision of this agreement—a revision that would eliminate this case-by-case review process. Under a new and extremely ill-advised, and in my view illegal, policy of "programmatic prior consent," the United States would grant Japan a blanket 30-year United States consent to recover tons (not just pounds) of plutonium—one of the most dangerous substances on Earth—from United States-origin nuclear fuel, and to receive additional tons of this material from Europe via air shipments most probably through United States airspace. The result would be:

Abandonment of key aspects of a U.S. nuclear export control policy that has served us well for a decade.

Massive international commerce in weapon-usable plutonium, well before international environmental and security controls can handle such commerce.

No more case-by-case reviews, neither by the Executive nor Congress, and no congressional role in approving uses of United States nuclear fuel at future Japanese facilities, or in evaluating future changes in applying safeguards.

No compensating Japanese commitments to require full-scope safeguards as a nuclear export condition, or to abandon planned commercial fuel cycle facilities—including large-scale enrichment and reprocessing plants that would only reduce Japan's purchases of United States nuclear materials and services.

Irresistible pressure to forge similar agreements with countries having poorer nonproliferation credentials.

ACTIONS BY CONGRESS

Fortunately, the Atomic Energy Act gives Congress a say in ensuring that "any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security."

Congressional opposition to this agreement is—as it should be—both strong and bipartisan. I gave my detailed objections to this agreement in testimony before the Senate Foreign Relations Committee on December 15—CONGRESSIONAL RECORD, February 2, 1988, page S626. A few days later, the Senate Foreign Relations Committee voted 15 to 3 against this agreement, and 23 members of the House Foreign Affairs Committee wrote to the President to challenge the agreement's wisdom and legality. Many of these concerns could have been addressed if the State Department had not kept Congress and other agencies in the dark during the talks over the accord.

OPPOSITION FROM NRC AND DEFENSE

Last July, the NRC complained to the State Department about "its exclusion from essentially all aspects of the negotiations on this agreement." Four months earlier, Assistant Secretary of Defense Richard Perle testified before my Governmental Affairs Committee that "I am afraid that much of the negotiation between the United States and Japan had taken place without being reported to us." When the NRC and Defense finally saw what had resulted from these negotiations, they both opposed the agreement—in no uncertain terms and in writing.

THE WEINBERGER LETTER

Secretary Weinberger wrote to Secretaries Shultz and Herrington last April and spelled out the legal and national security grounds for the Defense Department's opposition. Although its "Secret" classification prevents me from attaching a copy of that letter, the State Department has advised me that the letter may be read by "all interested Members and cleared staff."

I have seen the Weinberger letter and it is a real eye-opener. I can't imagine how any Member of Congress can make an informed judgment on the security risks of this agreement without seeing this letter and its attachments. Although the Defense Department's new leadership now supports the agreement, I have seen nothing that seriously addresses the concerns identified in that letter.

I strongly urge all my colleagues to read the letter, its 12-page annex with its important tabs A-C, and related materials before the mid-April deadline for Congress to act. To set a time to read this material, you may phone Mr. Sheldon Krebs of the State Department's Legislative Affairs Office, at 647-8732. Read the letter—you be the judge.

VIEWS OF PERLE AND GAFFNEY

There is another letter that I would like to make available to all Members who are concerned about the national security implications of the so-called programmatic approval policy found in this agreement. Mr. President, I ask to enter into the RECORD at the end of my remarks the text of a recent letter I have received from former Assistant Secretary of Defense Richard Perle, and former Deputy Assistant Secretary of Defense Frank Gaffney, who provide several compelling reasons why the proposed agreement should not be approved.

The candid assessment by Perle and Gaffney raises several disturbing aspects of this agreement that deserve very close attention. If it is true that the Defense Department was, as their letter claims, "for all intents and purposes unrepresented on the interagency team" that prepared the draft agreement, and that the Department was "kept uninformed about the policies and instructions which guided that team," this is a sad commentary on the Executive's handling of our national security interests in this agreement.

I intend to examine these revelations in closer detail in the weeks ahead, and to look in particular at the adequacy and effectiveness of the interagency process not just for reviewing this draft agreement for nuclear cooperation, but for handling all nuclear nonproliferation issues that bear on U.S. national security. We simply cannot afford to delay such a review much longer.

CONCLUSION

In summary, I believe the proposed agreement is a dangerous departure from past U.S. policy, is unneeded to continue nuclear cooperation with Japan, would create an artificial—noneconomic—demand for massive amounts of plutonium, and would pose new difficulties for the nonproliferation regime. I urge your support for efforts to revise or reject this flawed

agreement. We must eliminate this dangerous notion of "programmatic prior consent"—it has no place in our laws and no role to play in serving the national interest.

The letter follows:

AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH,
*Washington, DC, March 2, 1988.*

Senator JOHN GLENN,
*Chairman, Senate Committee on Governmental Affairs, Senate House Office Building, Washington, DC.*

DEAR SENATOR: As the Congress considers the proposed new United States-Japanese Agreement on plutonium, we would like to share our view of that accord and the process by which it was negotiated.

We were the Defense Department officials responsible for nonproliferation matters during the period this agreement was under negotiation and review by the Executive Branch. Our concerns about the agreement were reflected in the Department's official position on the accord, expressed in a memorandum from Secretary Weinberger to the Secretary of State on April 20, 1987. That position reflected our judgment and advice over several years, and nothing that was subsequently done to gloss over our concerns would lead either of us to abandon that position now.

The Defense Department regarded this agreement as seriously flawed. Two aspects were especially troublesome: First, it gives to Japan advance U.S. consent to reprocess and use U.S.-originated plutonium in any Japanese facility it chooses, without restriction as to quantities, purpose or economic justification and for a very long period into the future.

Second, it imposes extraordinary and unprecedented restrictions on the right of the United States to suspend that prior consent should future circumstances warrant such action during the life of the agreement.

In advocating the new accord some proponents have suggested that ill-defined safeguards "concepts" and the right to suspend the agreement are sufficient to protect American interests. As a practical matter, however, the ability to detect a diversion or to respond by withdrawing our approval after it has been abused, cannot substitute for our present right to make a priori determinations of proliferation risks on a case-by-case basis. Such determinations are not only preferable—they are required by the Atomic Energy Act. The new accord's failure to permit us to make them is clearly inconsistent with the letter, spirit and intent of the law.

The point is not that we are particularly concerned that Japan may wish to divert weapons grade material to military purposes. It is, rather, the importance we attach to the case-by-case approach to acting on these matters. We believe that the case-by-case approach is fundamental to a policy of discouraging nuclear proliferation. Abandoning it now, as the new agreement would do, even for a close friend like Japan, will expose the government to other such requests. And we will find ourselves faced with diplomatic and political pressure to accord other friends the same treatment we are about to extend to Japan. The case-by-case standard, which is itself a discouragement to the use of plutonium, will soon give way and existing law will have been undermined.

To argue that we now know enough about the circumstances under which future transfers would take place to consider this agreement a reasonable approximation of the case-by-case approach is ludicrous. It is a little like saying that a physician can now write 30 years worth of prescriptions because he can anticipate future illnesses today.

It should be noted that the Defense Department was not permitted to play a meaningful role in the negotiation of this agreement. Defense was, for all intents and purposes, unrepresented on the interagency team that prepared it and kept uninformed about the policies and instructions which guided that team. In our view, had the Department of Defense been able to participate fully in such activities, the strong position that the Department has taken against nuclear proliferation would have helped to shape the accord differently. That, we are quite sure, is why the Department of State went to such lengths to work around us.

Unfortunately, this procedure is standard practice in the State Department's management of non-proliferation matters, a problem about which one of us has testified extensively. State's petty bureaucratic behavior and secrecy with respect to control of the flow of information between responsible U.S. Government departments has effectively prevented informed interagency consideration and constructive criticism of proliferation-related negotiations and activities. While subsidiary to the immediate question of Congressional approval of the accord so produced, this chronic problem merits attention and correction.

In our judgment the issue for the Congress to decide is whether we should dispense with the reasonable and prudent protection against the unexpected that derives from approaching these proliferation issues on a case-by-case basis. Approval of the accord will abandon that approach which is now required by our law, our past policy and by the humble recognition that we cannot see with confidence 30 months, much less thirty years, into the future. We hope the Congress will address this issue squarely by rejecting the new agreement with Japan.

Sincerely,

FRANK J. GAFFNEY, Jr.,
*Senior Fellow, The Hudson Institute.*
RICHARD PERLE,
*Resident Scholar, American Enterprise Institute.*●

## GULF SHRIMPER PROTECTION

● Mr. SHELBY. Mr. President, I have sent a letter today to Mr. Verity, the Secretary of the Department of Commerce, requesting that he hold in abeyance the TED's regulations which became effective in the gulf area on March 1, 1988. I believe that this action is required in order to protect gulf shrimpers from unnecessary financial hardship. I am referring to the financial burden which these shrimpers would incur by being required to use turtle excluder devices or TED's as they are commonly called.

By now, I'm sure that most of you have heard of TED's, the cage-like devices attached to shrimp nets to prevent the incidental catch of sea turtles. Of particular concern is the Kemps Ridley turtle, an endangered species.

I am very supportive of protecting endangered species; however, to quote the senior Senator from my State, "We don't want to make the gulf coast shrimper an endangered species." The use of TED's may indeed do just that.

There has been little evidence to date to indicate that the use of TED's will significantly affect the survival rate of sea turtles. Shrimpers contend that they rarely encounter turtle; and, when shrimpers do accidently catch turtles, the majority of the turtles are returned to the water alive. It appears that the National Marine Fisheries Service has taken what can be viewed as a somewhat overzealous approach in its effort to protect the endangered turtles. There simply is no conclusive evidence, presently, that shrimpers are to blame for the dwindling sea turtle population. Conversely, there is ample evidence that TED's pose a hazard in rough weather and unnecessarily weigh and drag shrimper's nets.

For many in the shrimp industry, shrimping is not just a job, but a way of life. The art of shrimping is passed down from generation to generation; and, families in the shrimping business are proud of their heritage. A shrimper's life can be a hard life; however, shrimpers possess that special pioneering character of rugged individualism embodied in the founders of our country—believing that if one works hard and long, he can be successful. We, in the Congress, cannot allow the TED's regulations to shatter this ideal.

I believe that the only viable solution at this point is to hold the TED's regulations in abeyance until the National Marine Fisheries Service [NMFS] or the National Oceanic and Atmospheric Administration [NOAA] collects more definitive data on the factors contributing to the high mortality rate among sea turtles. We already know that the high mortality rates are due to a variety of factors such as the use of underwater explosives to remove oil rigs, the development of beach resorts, the robbing of turtle nests for eggs, the illegal capture of turtles for human consumption, the changing climatic conditions, and the pollution of marine waters.

The shrimp industry is being treated unfairly in being asked to risk economic ruin while others are not required to do similarly. The burden of saving the sea turtles should be shared equally. No quantitative studies have been completed to estimate the relative contributions to total turtle mortality from different impacts. The National Marine Fisheries Service [NMFS] has incomplete information on the causes of the high mortality rates for sea turtles. Yet small family businesses are being asked to endure an enormous hardship which may be unnecessary.

The shrimp industry generates about 10 million pounds of shrimp annually with a dock value of about $20

million. Shrimpers say that TED's would reduce their catch by one-third. The initial cost of TED's to the shrimp industry during the first year is estimated at $4.6 to $8.13 million. By 1990, the cost is expected to be $7.85 to $15.7 million. The enormous cost of TED's is obvious. There are not many businesses that can cut their revenues by one-third, increase their costs, and still survive.

Mr. President, I urge my colleagues, not just from the Gulf Coast States, but from all States across this country, to consider the broad effects of regulating action of this sort. I believe that we can work together to find a suitable alternative to the turtle excluder device—an alternative that will protect the Kemps Ridley turtle, as well as other endangered species—and yet not overburden the vital shrimp industry.●

## THE CONGRESSIONAL CALL TO CONSCIENCE: THE CASE OF YULI KOSHAROVSKY

● Mr. HEINZ. Mr. President, today I call the attention of my colleagues and the American people to a Soviet human rights case that deserves all of our energy and support. Last May I visited Moscow to assess the state of human rights under Mikhail Gorbachev. In 4 busy days I met with a fascinating variety of Soviet dissidents and ordinary citizens who have run afoul of the Soviet state's restrictions on freedom of expression, conscience, and emigration.

One of the most compelling and engaging Soviets I met at that time is Yuli Kosharovsky. Yuli is a Jewish refusenik, who has waited 17 years for the right to emigrate to Israel. This makes Yuli perhaps the senior refusenik still in the Soviet Union. But Yuli is more than this. He is also a Hebrew teacher, who has suffered additional punishments because of his commitment to the promotion of Jewish culture.

Yuli and his family intend to begin a hunger strike next week to dramatize their case. It is a case that involves key principles related to the right to emigrate from the Soviet Union. Yuli has been denied a visa because of his access to state secrets and the lack of a first-degree relative outside the Soviet Union with whom he can be united. These are the two issues that are the principal obstacles to progress in giving freedom to Soviet Jewry.

Yuli Kosharovsky is not the only Soviet Jew whose right to emigrate is denied on the basis of state secrets, or because he lacks a first-degree relative abroad. Nor is he the only one to suffer through the years for his devotion to Jewish culture. But his case has languished for 17 years. His case epitomizes the struggle Soviet Jews now face to leave the Soviet Union.

Efforts are underway to bring our concern about the Kosharovsky case to the attention of Soviet authorities. The Kosharovsky family plans a hunger strike beginning next week. It is time the Kosharovskys were set free. They have paid a high price to exercise a fundamental human right—far too high a price. We have to let the Kremlin know that we respond to real progress in human rights—and we are waiting for such progress. Resolving cases like that of Yuli Kosharovsky is a necessary first step.●

## TIMBER APPEALS

● Mr. PACKWOOD. Mr. President, in the past week, more than 200 U.S. Forest Service timber sales in Oregon—representing several million board feet of timber—have been appealed by an environmental group called the Oregon Natural Resources Council. I am very concerned the probable effect of their appeals may be to shut down a significant portion of the Forest Service's Oregon Timber Sale Program. The possibility of such action could have significant and serious impacts throughout my home State affecting thousands of Oregonians.

Pursuant to the Timber Contract Modification Act of 1984, the Forest Service is allowed to resale timber contracts originally sold prior to 1982. These are contracts which have been returned unlogged or were defaulted.

In challenging these sales, ONRC argues the contracts have not been adequately modified incorporating new environmental information since they were originally sold. They point out the Forest Service uses different standards today to protect fish, wildlife habitat and other forest uses. I am told that each appeal represents a site-specific concern.

ONRC's approach is not one shared by several of the other major environmental groups including the National Wildlife Federation, the Wilderness Society, and the National Audubon Society. In fact, the National Wildlife Federation attempted to dissuade ONRC from taking such a blanket approach.

Currently, the Forest Service is in the process of drafting final long term plans on management for Oregon's national forces. Unfortunately, these appeals by the ONRC will only delay completion of these plans so important to Oregon.

We simply cannot afford to be deadlocked on such important decisions affecting the future of the State. We must act now to develop a consensus in the protection and management of our national forests. I will work toward this goal with the delegation and other interested groups.●

## CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that morning business be closed.

The PRESIDING OFFICER. Without objection, it is so ordered.

## INTELLIGENCE OVERSIGHT ACT

Mr. BYRD. Is the Senate back on the intelligence authorization bill?

The PRESIDING OFFICER. That is correct.

The Senate resumed consideration of the bill.

### EFFECTIVE U.S. FOREIGN POLICIES

Mr. BYRD. Mr. President, I commend the committee for this important piece of legislation. It is a very appropriate response to the excesses which were so thoroughly documented by the investigation of the select committee, chaired by the distinguished Senator from Hawaii, Mr. INOUYE, into the secret policy of trading arms for hostages with Iran. I note that the distinguished chairman of the Intelligence Committee, Mr. BOREN, and the distinguished ranking member of that committee, Mr. COHEN, both served on that investigating committee, and this piece of legislation exemplifies the kind of followup work that can be done, putting into the law the timely and appropriate recommendations of that Senate investigation. I congratulate them on their work.

This is an excellent bill, and the provisions contained therein are worthy of the Senate's support. The provisions, requiring written findings submitted in a specific timeframe to the Congress, and including information on who is participating in the special activities, private parties, contractors, third countries and so on, are all matters which close loopholes in the current law, and close off excuses which were used by administration officials to avoid informing the Congress of its activities in the Iran affair.

This legislation, Mr. President, cannot force an atmosphere of trust between the branches. It cannot stop men from deceptions when they want to deceive. It can make it harder to justify deception. It can make circumvention of the law harder to justify when such circumvention is finally discovered. In a word, it can force the appropriate atmosphere wherein U.S. foreign policies are made and implemented in a way which makes them more sound and more defensible.

We all want the United States to stand with the highest degree of stature in the world. We all want to support sound foreign policies, which are justifiable, will stand the test of time, and which we can defend openly. The framers of our Constitution gave sufficient powers to each branch, to the executive and Congress alike, that make it essential that foreign policies be de-

veloped through consensus, for each branch can check the other, and if they are at loggerheads the result is most likely to be frustration and failure. So, effective foreign policies must be built through an often difficult, wrenching process of consensus building—consensus building between the two branches, and also in the development of the necessary support for them by the American people at large. There is really no adequate substitute for this process. There is no easy way out.

The method which was tried in the case of the arms-for-hostages fiasco, the formation of the policy in secret, by a narrow group of policymakers, and at variance with the stated policy of our Government in the matter of dealing with terrorists, failed because it could not stand the light of scrutiny. It could never have been agreed to through the consensus-building process I have referred to, and so that process was deliberately avoided. The consequences of failure for such policies is very high, as we have learned. The result of the revelations of our secret policy was to damage the credibility of the United States in the Arab world, and beyond the Arab world.

Covert actions, or special activities, however one calls them, are by their very nature secret and because of this they fit only awkwardly into a democratic framework.

They are, by their nature, not subject to wide consensus-building and this is all the more reason for key members of both branches to scrutinize them and review them. There is always the potential that they can cause more mischief for the very democratic process they are supposed to protect than the evil they are designed to combat. They should never, as this legislation makes clear, be at variance with stated U.S. foreign policies, but be a special method of implementing such policies. They have to be limited, they cannot be the centerpiece of our operations in the world. Thus, they must be subject to the kind of tight and rigid rules that are embodied in this legislation.

Mr. President, the rationale that some are fond of using, to justify secret policies, kept out of the reach of the Congress entirely, is that the legislative branch cannot be trusted, that it leaks, and that would endanger the lives of the men involved, and the success of, the operation being engaged in. There are protections in this bill against the wide dissemination of the sensitive information involved. And, beyond that, I would have to take exception to the allegation. I would point out that Colonel North, in his testimony before the Iran investigating committee, tried to argue that leaks from the Congress endangered the Libya raid of April 14, 1986, for instance. The distinguished chairman of the committee, Mr. INOUYE, shredded that allegation. He demonstrated convincingly that the leaking of information about the imminence of that raid was, in fact, a torrential downpour for many days before the raid, but was a downpour which originated exclusively from the executive branch itself. So, the question of a leaky Congress is a red herring. Further, the protections in this bill effectively rebut that argument.

Mr. President, the ways in which the two branches cooperate in the formation of our policies are still incomplete. This legislation makes an important contribution in the area of special activities. We still have a lot of work to do to improve the situation regarding the commitment of the Nation to enter hostilities, or to go to war, or to enter into situations where commitments may be inferred by our very presence. The War Powers Resolution, which is the current law, needs to be improved in order to regularize the sharing of policymaking power which the framers intended in this area, and in order that effective and sound policies may be developed through consensus-building. I am in the process of constructing a legislative proposal to make adjustments to the War Powers Resolution, to make it more workable, to improve consultative procedures, to address situations where rapid actions are contemplated, and to not signal timetables or withdrawal scenarios to adversaries and potential adversaries. This is a difficult area, and it demands our attention. I know the distinguished chairman of the Foreign Relations Committee, Mr. PELL, has established a special panel to deal with this very critical subject, and I hope that he will be able to carve out the time to address the issue after the Senate has disposed of the INF Treaty.

Today, we have before us a commendable, positive step in the right direction, a balanced piece of legislation which responds to recent abuses in a responsible way. I hope it is passed overwhelmingly.

Mr. MURKOWSKI. Mr. President, I thank the leadership at this time for accommodating the minority's schedule and I indicate my deep appreciation. It is always a pleasure to have the opportunity to be with the leader.

Mr. BYRD. I thank the Senator and I reciprocate in kind.

## ORDERS FOR FRIDAY

RECESS UNTIL 8:45 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 8:45 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order, there be a period of morning business not to extend beyond 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask unanimous consent that Senators may speak during that period for the transaction of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

## ORDER OF PROCEDURE ON TOMORROW

Mr. BYRD. Mr. President, I ask unanimous consent—and this is not needed—but I ask unanimous consent that the Senate resume consideration of the intelligence authorization bill at 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I understand that the pending question is on the McClure amendment; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Mr. President, I will not schedule a vote at 9:30 a.m., in view of the fact that the amendment is pending. Senator MCCLURE will be here early and there should be a rollcall vote on that amendment or on a motion in relation to it on tomorrow. There may be other rollcall votes on the bill. I expect the bill to be acted upon tomorrow, and there may be other rollcall votes as well.

It will be my intention on tomorrow hopefully to lay down the Price-Anderson legislation before the Senate goes out for the week.

## RECESS UNTIL 8:45 A.M. TOMORROW

Mr. BYRD. Mr. President, there being no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until 8:45 a.m. tomorrow.

The motion was agreed to; and, at 8:13 p.m., the Senate recessed until Friday, March 4, 1988, at 8:45 a.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate March 3, 1988:

SECURITIES INVESTOR PROTECTION CORPORATION

FRANK G. ZARB, OF NEW YORK, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1989.

DEPARTMENT OF COMMERCE

PAUL FREEDENBERG, OF MARYLAND, TO BE UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MARK E. BUCHMAN, OF CALIFORNIA, TO BE PRESIDENT, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION.

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

HOWARD W. CANNON, OF NEVADA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION FOR A TERM OF 4 YEARS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.